Citizenship and Professional Practice in Ontario

Prepared by
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for
The Professional Organizations Committee

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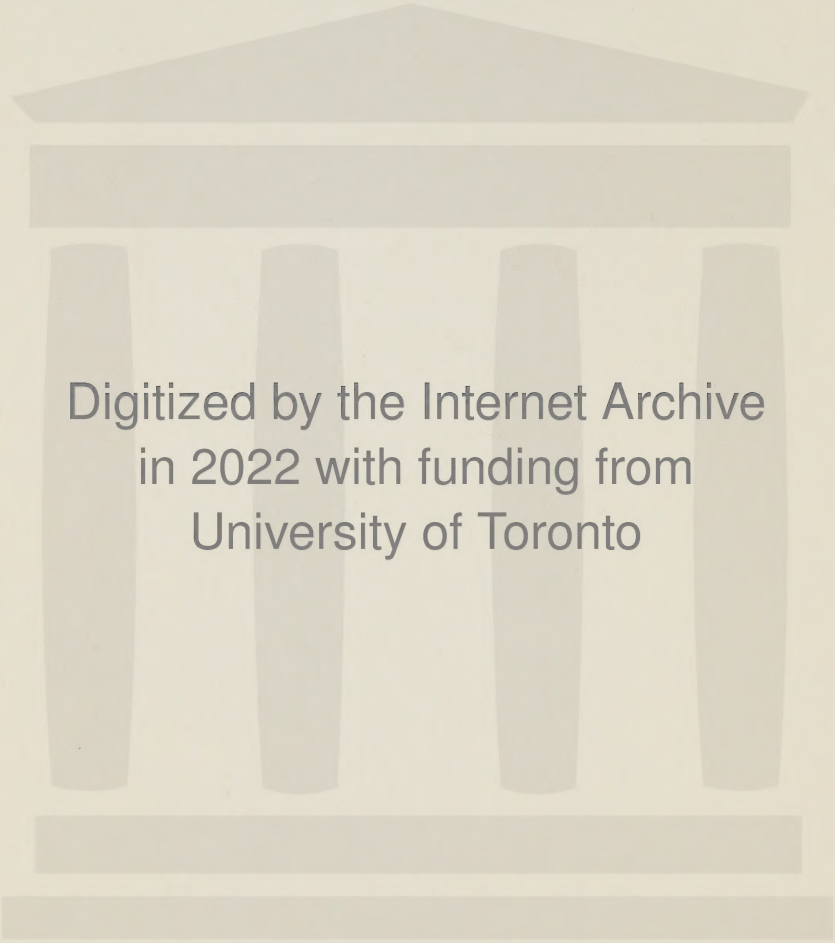

WORKING PAPER
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CITIZENSHIP AND PROFESSIONAL PRACTICE IN ONTARIO

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for

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TABLE OF CONTENTS

CITIZENSHIP AND PROFESSIONAL PRACTICE

I. INTRODUCTION

In all of Ontario's professional regulatory legislation, only two statutes require a specific national status as a condition for practising a profession.

Lawyers must be Canadian citizens or British subjects before being admitted to the Law Society.[1] Architects must be British subjects or take an oath of allegiance and declare an intention of becoming a British subject and have Ontario domicile before being admitted as members of the Ontario Association of Architects.[2] However, a new Architect's Act, which has been waiting for government approval since 1968, would remove both these requirements.[3]

These nationality requirements have been and are obstacles -- either temporary or permanent -- to otherwise-qualified applicants to both professions, applicants who have met educational, experience and "good moral character" requirements but have been either unable or unwilling to become British subjects or Canadian citizens.[4] No statistics are available showing the exact number of individuals prevented from practising either profession in Ontario because of nationality requirements. The group would include those who had immigrated with their parents of a very young age, and who had been raised and schooled in Ontario; applicants who had immigrated as adults, but who had received all their professional and pre-professional university training in Ontario; practitioners already qualified in a foreign jurisdiction, who were legal immigrants to

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Note: Many thanks to R. Lenoir, whose unpublished paper on "Discrimination Against Non-British Subjects in Admission to Practise Law in Ontario" gave me many helpful research leads on the issues which follow.

Canada and in other respects met all professional transfer requirements except those requiring Canadian citizenship or British subject status; and even professionals qualified in other provinces who were not required in those jurisdictions to be citizens or British subjects.[5]

For many persons such a nationality requirement is a significant, albeit temporary, obstacle to certification, since they are willing to make the required change of citizenship when legally able to do so. Until recently five years of residence in Canada as an alien admitted for permanent residence was a prerequisite for an application for Canadian citizenship.[6] An applicant could easily have completed his four and one-half years of legal training in Ontario or have met whatever additional requirements were made of him as a transfer lawyer from another country, and still not have completed the residence period necessary for citizenship. In early 1977 this residence period was reduced to three years, and this will reduce but not eliminate these "lame-duck" cases.[7] In some cases a transferring professional can qualify educationally for admission in under three years. Furthermore, those entering Canada for study, including professional training, are classified by the Immigration Department as students and given student visas, and can only receive landed immigrant status as permanent residents after completing their studies;[8] time spent in Canada on a student visa counts only for "one-half" actual time spent when calculating the period of residence it is necessary to establish before applying for Canadian citizenship.[9]

Other applicants are unwilling to change their citizenship or declare an intention to do so. They may be citizens of a state such as the U.S. which revokes citizenship upon acquisition of another citizenship, and may wish for personal or family reasons to preserve an option to return to live in their homeland. Or they may be persons who find it objectionable that they are asked to make an essentially political decision in order to receive the right to work in an area in which they are otherwise qualified according to provincial standards, and question the relevance of the requirement.

Although a number of individuals are prevented from engaging in their chosen occupation by these nationality requirements, this infringement of individual interests would be acceptable if there was a good reason for requiring a specific national status of certain professionals. To evaluate this requirement, one must consider the rationale advanced for certification of persons selling certain skills.

Canada has a free enterprise economy, and in general one is not required to obtain the approval of any government body before being allowed to offer one's services to the public. Certification is required of professionals because it is said that their work involves such complex skills and such important matters to the client that the consumer of these services cannot usually be protected by an exercise of his or her own judgment; rather, it is necessary for the State to set a test for a minimum level of competence and integrity for the consumer to be protected adequately.[10] A recent provincial committee

reviewing legislation governing the medical profession said that the power to create the monopolies sanctioned by professional regulatory legislation is defensible only because it is necessary "for the protection of the public against incompetent or dishonest practitioners."[11] A supplementary purpose of certification was suggested in research done for Ontario's study on post-secondary education: communication of information about an individual's minimum level of expertise to the public in a shorthand form,[12] which helps the client to protect himself.

What protection against incompetent or dishonest professionals does a nationality requirement deliver to the public? "None" was the answer of Mr. Justice McRuer, who said in his report on the "Inquiry into Civil Rights in Ontario" that citizenship should not be a condition precedent to membership in the professions, as there was no rational basis for this requirement.[13] It would be difficult now to find a North American scholar or jurist who would disagree with him. But his attitude presents a sharp contrast to the values and opinions generally accepted two generations ago, when nationality requirements were quite prevalent for many types of professions and other occupations in Canada and the U.S., and when it was thought that alienage indicated both a lack of expertise and a deficient moral character.[14]

In this paper it is proposed to discuss the historical background of requirements in Canada and the U.S. tying the right to work to nationality requirements, and the discrediting of the rationales upon which those general

prohibitions were based.

It has been argued, by Mr. Justice McRuer and many others, that lawyers represent an exception to the generally accepted rule now that citizenship is not a relevant criterion on which to condition admission to the profession. These arguments are based on suppositions that lawyers have even weightier fiduciary duties than other professionals towards their clients, and, more importantly, that they have an official or quasi-official position in the State's administration of justice, and that as "public officers" of a sort they should comply with the requirement of citizenship made of other public officers. These arguments will be reviewed to explore the validity of the "special case"; in the course of the exploration, the history of provincial legislation governing lawyers as well as similar legislation in other jurisdictions will be reviewed.

Some historical exploration will be done to establish the meaning of the concepts "Canadian citizen" and "British subject". It is suggested that classification today of a person as a British subject is a relatively meaningless indicator, being a concept which has changed in its meaning frequently in Canada's history; one which has a different meaning among Commonwealth countries themselves, and which does not indicate a common legal or political system.

The constitutional validity of nationality requirements in professional regulatory legislation will be considered. There is no doubt that The British North American Act allows the provinces to provide generally for the regulation of

professional activity within their boundaries, but whether a prohibition against legally resident aliens offering such services offends the Dominion power to legislate with respect to "aliens and naturalization" or "immigration" has only been peripherally considered in Canadian litigation to date. Attention will be given to the effect of the Ontario Human Rights Code and the federal Bill of Rights on such legislation.

Finally, this paper will explore the advisability of requiring members of the governing councils of professional self-regulatory bodies, who exercise delegated legislative powers, to be citizens or British subjects. At present, this requirement is made of the governing Council of the Association of Professional Engineers of Ontario. Although there is no specific requirement that members of the governing bodies of the Ontario Architects Association or the Law Society of Upper Canada be British subjects or Canadian citizens, such members are in general chosen from the members at large who must meet nationality requirements before admission.

II. ALIENS AND THE RIGHT TO WORK

One useful approach to understanding rationales accepted in the past to support reservation of membership in the professions to citizens is to view these rationales in the larger context of efforts made at the turn of the century, when both Canada and the U.S. experienced a large spurt in immigration, to restrict aliens to certain jobs or keep them out of others.

A. Immigration at the Turn of the Century

Canada saw a boom in immigration at the turn of the century. In the decade from 1901 to 1911, 1,847,651 immigrants were admitted, and the volume continued until 1913, when a record 400,870 entered. In the decade immediately prior, only 257,000 immigrated to this country, and in the thirty years at the beginning of the Confederation era (1861-91) there were fewer immigrants than in that first decade of the 20th century.[15]

This rapid influx of immigrants was the result of a deliberate federal strategy begun in the 1890's and continued until the Depression, to populate the prairies, recently opened up by transcontinental railways, with farmers who would help develop what looked like a limitless international market for Canadian wheat.[16] This immigration policy also incorporated racial and national preferences for immigrants, based on how closely a group resembled those who already populated Canada. British and Americans had top priority (and in fact, were actively recruited as immigrants by the government), "then Scandinavians and Germans, then Ukrainians, Russians and Poles. Close to the bottom of the list came those who were, in the government's mind, less assimilable and less desirable people such as Jews, Italians, South Slavs, Greeks and Syrians. At the very bottom came Orientals and Blacks."[17]

This policy was not completely successful. Insufficient numbers of British and Americans immigrated, and the government found it necessary to admit large numbers who were not from preferred racial and national categories, and found

that many of these people did not settle in the prairies to farm, but gravitated to cities.[18] In the cities, however, many found work which business considered economically useful, taking jobs at lower wages than those which Canadians would accept or doing work considered too dirty or dangerous for Canadians.[19] For example, in their portrait of Toronto immigrant settlers of this period, Harney and Troper found that the two most common areas of work were in construction and the garment industry, and comment that immigrant labour made possible the city's mushrooming growth in that period as well as providing the bulk of the labour for the important garment trade.[20]

B. Attitudes Towards the "New" Immigration

Despite their economic contributions, this stream of immigrants was resented or feared by many native Canadians.[21] Xenophobia was, of course, not a completely new phenomena in Canada. For example, Ivan Head notes an early outbreak against Americans who settled in Upper Canada after the War of 1812 in attempts made to deprive them of previously-granted political rights.[22] But both official and popular hostility was strong to these "new immigrants" because they were arriving in unprecedentedly large numbers and their racial and cultural differences from the indigenous population were greater than had been previously experienced.[23] One commentator summed up the reasons for government's lack of enthusiasm about these new immigrants: "These newcomers were not English-speaking, not Protestant, not anxious to live in rural isolation, and

were in the racial definitions of the time from 'inferior stock'".[24] Resentments increased in times of economic hardship, when Canadians found themselves competing for what had been considered undesirable jobs with immigrants.[25]

As Marilyn Barber points out in her introduction to J.S. Woodsworth's Strangers Within Our Gates, published in 1909, it was an accepted attitude both in Canada and the U.S. at the time to see foreigners as morally and intellectually inferior to Canadians, and a source of higher rates of crime, mental disease, and pestilence.[26] Even a humanist and reformer like Woodsworth shared the basic premises of this attitude (although he believed that through concerted church and government attitude many immigrants were assimilable).[27] A Canadian academic argued in 1900 that this new type of immigration should be completely excluded from Canada, arguing that "the moral right..of the higher race to displace the lower...justifies the people of this continent in shutting out alien elements of the population as seem likely to lower rather than raise the general type of life".[28]

C. Work Restrictions and Immigrants

These attitudes towards immigrants sparked legislation in both Canada and the U.S. restricting them from certain types of work. Some legislation restricted aliens from certain jobs which required a high standard of integrity or trustworthiness or involved matters which might affect public health or safety, relying on governmental authority to protect public morality,

health and safety and assuming agreement on aliens' moral inferiority. On this basis laws were passed excluding aliens from many professions and from work involving public welfare or safety. The same rationale was employed to justify alien exclusion from activities which were thought to offer unique opportunities for criminal behaviour, such as operating a pawnbroking business or tavern.[29]

Legislation was also passed restricting aliens from work where any governmental resources were concerned (this category included laws restricting aliens from public service or public works projects, from employment by private enterprise on government land, or from various occupations for which a government license was required) on the theory that government had a right to allocate its resources to its citizens in a higher priority than that given to aliens.[30] (In Canada this theory was not as often explicitly invoked as justification for such legislation as it was in the U.S.)

Fairly well-known is the legislation passed in B.C. and other Western provinces aimed at Oriental and East Indian immigrants. Statutes were passed excluding one or all of these alien groups from numerous professions and other occupations,[31] prohibiting their employment of white women,[32] prohibiting their employment on public property,[33] taxing any employer who hired one,[34] and extracting a "head tax" from them for merely being allowed to exist in Canada.[35]

Provincial pressure led to the Dominion's passage in 1897 of The Alien Labour Act,[36] which prohibits anyone from

soliciting or assisting an alien from coming to Canada to work.

Although the Western provinces experienced the largest amount of non-white immigration in this period and, therefore, had the largest number of statutes explicitly directed against aliens, Ontario's population and leaders shared sentiments similar to their Western brethren. For example, Harney and Troper in their report on immigrants' experiences in Toronto in the early part of the century cite newspaper reports commenting darkly on the threat which the Chinese posed to decent Canadians, and record that Toronto City Council seriously entertained a motion which would have tried to deprive all foreign-born people of the right to vote in municipal elections.[37]

It was during the period of this immigration boom and a federal immigration policy geared to attracting many new immigrants that Ontario first passed legislation limiting certain professional opportunities to British subjects; these exclusionary rules were imposed with respect to stationary engineers and public officers in 1909;[38] barristers and solicitors in 1912;[39] and architects in 1935.[40] It is interesting to note that for a short period of time there was an easing of the rule with respect to barristers and solicitors, to allow admission to the profession of not only British subjects but aliens who had taken an oath of allegiance and declared an intent to become a British subject.[41] This more liberal provision was repealed during the Depression in 1934, and applicants were again required to be British subjects before admission.[42]

Several American historians have suggested that U.S.

laws excluding aliens from certain professions or occupations came into being as a result of strong lobbies from groups already in the occupations who preferred not to encounter competition from aliens.[43] Konvitz, author of The Alien and the Asiatic in American Law, states: "Anyone acquainted with the way our legislatures operate knows that such acts are not sponsored by public spirited citizens or groups or by persons interested not in furthering their selfish aims but only in the public welfare; such acts are not sponsored by consumer-interest groups; they are offered and pressured by an organized business, profession or calling....If the bill passes, it means that the pressure group was worthy of attention; if it fails, it means that the pressure group did not amount to much in terms of prestige, voting strength, or financial contributions to political campaigns. Such laws are directed to the elimination of competition from aliens qualified to engage in the calling."[44]

D. New Attitudes Towards Aliens and Work

After World War II both community values and government policy with respect to aliens began to change as a result of fear at the results of Hitler's racist policies, developments in the social sciences and increasing political strength of countries from which "new immigration" came.[45] It became less acceptable to restrict aliens from certain job opportunities merely on the grounds that they were aliens.

Assumptions which identified alienage with a lower intellectual or moral status had by the 1960's become so

intellectually unacceptable that those opposing them used little time in their rejection. For example, Mr. Justice McRuer in his report on the Inquiry Into Civil Rights felt it was sufficient to simply state that there was "no rational basis" for the requirement of citizenship as a condition precedent for membership in the self-governing professions, and recommended the abolition of such requirements.[46] Public policy in Ontario, as articulated in the province's Human Rights Code, prohibits discrimination in employment on the grounds of nationality, which the Human Rights Commission has interpreted to mean not simply national origin but citizenship.[47]

Although current mores would not tolerate an exclusion of aliens from jobs or the professions in general on the grounds that they are less competent or trustworthy, might not there be acceptable exclusion of aliens from the professions premises on the assumption that it is the State's right -- or even duty -- to restrict access to scarce resources or opportunities to its citizens?[48]

It is unsafe to base such a theory on the assumption that the citizen has made a greater contribution to our society than the alien; a landed immigrant may have raised a family, paid taxes and operated a business employing many workers in Canada, while a citizen may never have set foot inside the country. Furthermore, such protectionist ideas do not fit in with the rationales offered to justify the interference in the free market of professional services which professional certification or licensing requirements represent. The only rationale officially

put forth to support these requirements is the protection of the public from incompetent or dishonest practitioners.[49]

Attempts to restrict professional certification or licensing to citizens or some other national group which were openly based on protectionist policies would almost certainly lead to constitutional difficulties.[50] Provincial statutes excluding aliens from certain occupations have in the past been saved from judicial overthrow because these laws were said mainly to concern a "valid provincial aspect" -- most often the efficient regulation of some occupation or business. A frank acknowledgement that provisions excluding aliens were not justified by anything more than a wish to favour citizens over other residents would certainly pose a much bolder challenge to the federal power to legislate concerning "aliens and naturalization".

III. LAW -- A SPECIAL CASE?

It has often been argued that even though citizenship or British subject status is not a justifiable requirement for membership in other professions, that it is in the legal profession - that there is something unique in a lawyer's role - that citizenship becomes a rational requirement of an applicant. The arguments take the following variations:[51]

1. A lawyer is an "officer of the court", and this status and the duties entailed require Canadian citizenship or British subject status.

2. A lawyer is required to take an oath of allegiance, and Canadian citizenship or British subject status is a prerequisite

to such action.

3. A lawyer must have knowledge of the British common law and parliamentary government which underlie our society, and to ensure that applicants have such knowledge we should require Canadian citizenship or British subject status.

4. The tradition of reciprocity among the bars of Commonwealth countries requires that all lawyers be Canadian citizens or British subjects.

Before examining these arguments, it is useful to review the historical background of the nationality requirement for lawyers in Ontario and comparative practice in other jurisdictions.

A. Historical Background

It was not until 1912 that British subject status was required for certification as a barrister or solicitor in Ontario.[52] It is difficult to say if this change represented a real change in the practice of the Law Society, or the converse and was merely a codification of a long-standing practice of exclusion of aliens.

To appreciate this legislation in its historical context, it should be noted that the widespread civil disabilities which England imposed upon aliens in the 18th century were probably not imported wholesale into Canada in 1792 when English law was "imported".[53] It was clear that only those provisions appropriate to the colonial situation should apply, and heavy restrictions on aliens were clearly

inappropriate to a colony striving to attract new settlers. For example, British restrictions on alien rights to hold land or vote do not seem to have been applied uniformly in early Upper Canada.[54]

Early in the history of English colonies in Canada a local government regulation barred Roman Catholics from the practice of law, but made no mention of aliens.[55]

In 1785 the first legislation regulating the practice of law in Canada was passed; it made no mention of British subject status, but restricted practice to those who had been admitted to practise in England or elswehere in the Commonwealth or who had clerked for five years to someone so qualified in Canada.[56]

As a result of this ordinance, there were very few qualified barristers or solicitors in Upper Canada, and remedial legislation was passed allowing the Lieutenant Governor to license sixteen British subjects as advocates and attornies in 1794.[57] This constitutes the last explicit mention of any British subject requirement until 1912.

The 1794 statute was repealed in 1797, when the Act authorizing formation of the Law Society of Upper Canada (L.S.U.C.) was passed.[58] It provided that the Society's members should consist of those already authorized to practise in England, Ireland, Scotland, or the North American provinces. New applicants had to serve as students-at-law for five years, and were chosen by election by older members until at least 1812.[59]

Since the core members of the Society were British

subjects, it might be assumed that they acted to admit only new members who were also British subjects. There is no definite record of an alien ever being a member of the Society; Americans were admitted in the Society's early years, but it is not clear whether or not they were considered aliens.[60] However, in 1857 a bill was defeated requiring that all candidates for membership be British subjects.[61] This seems to indicate that the issue was considered, and British subject status rejected as a requirement.

Regulatory legislation in the 19th century showed far more pre-occupation with the question of whether an applicant's home jurisdiction has reciprocal transfer rules with Upper Canada than with the nationality of a transferee. Reciprocal treatment was required, and applicants from other parts of Canada as well as England were rejected when it was not meted out, even though they were British subjects and otherwise qualified.[62]

B. The History of the Meaning of the Concept "British Subject"

After the introduction of the "British subject" requirement into The Barristers and Solicitors Acts in 1912,[63] the only significant amendment to that requirement took place in 1970, when an amendment to The Law Society Act provided that a member of the Law Society had to be a British subject or a Canadian citizen.[64]

Every Canadian citizen is of course a British subject,[65] and this amendment was perhaps introduced as a cosmetic, catering to Canadian nationalists. Most legislative debate around the

amendment in 1970 focused on whether Canadian citizenship alone should be the requirement; the government's answer pleaded the common history and traditions of Commonwealth countries and reciprocal advantages for lawyers of Commonwealth countries as the defence for retention of the British subject status requirement.[66]

The term "British subject" has never been defined by provincial legislation making it a requirement for admission to the Law Society. Presumably, its meaning has been dictated by federal statute, since the Dominion is given the right to define the national status of persons in Canada.[67] If so, the term has not had a consistent meaning from 1912 (when first introduced as a requirement for Law Society admission) to the present, and today it has different meanings among Commonwealth countries.

In 1912 the question of who was a British subject was primarily a question of common law and the central issue in determining British subject status was whether there existed allegiance to the British monarch.[68] The primary national status of Canadians was that of British subject,[69] the term "Canadian citizen" having no clear meaning, and a British subject domiciled in Canada had the same rights as a native-born Canadian.[70]

This situation was changed in 1946 by The Canadian Citizenship Act, which made Canadian citizenship the primary status of a Canadian, defining British subject status simply as a status held by citizens of a Commonwealth country, and specifying in a schedule to the Act what countries were deemed

to be Commonwealth countries.[71] There was no requirement that an individual owe allegiance to the British sovereign to merit the status of British subject. Recent amendments to The Citizenship Act delete any reference to "British subject", referring instead to Canadian citizen or citizen of the Commonwealth.[72] Today one can be defined by our federal law as a citizen of the British Commonwealth without being a citizen of a country whose citizens owe allegiance to the Queen.

Whereas in 1912 the term "British subject" signified a common political allegiance and common political traditions and institutions, today it signifies none of these things, since there are Commonwealth countries whose citizens do not owe allegiance to the Queen and whose governments are republics or dictatorships.[73] One indication of the draining of meaning of the term are the recent amendments to The Citizenship Act referred to above which abandon the use of the concept British subject. This seems to recognize that the Commonwealth today is a loose association of countries with little more in common than a past history of British rule and possible pragmatic opportunities for cooperation based on that mutual past.

Furthermore, the meaning that Canadian federal legislation has given to the term "British subject" or gives today to the term "citizen of the Commonwealth" differs from the meaning given those terms in England, and in other Commonwealth countries. For example, British legislation acknowledged the withdrawal of Pakistan in 1973 and South Africa in 1962[74] from the Commonwealth, but Canadian legislation did not acknowledge this fact with respect

to South Africa until quite recently and still characterizes Pakistan as a Commonwealth country.[75] Other Commonwealth countries (as defined by Canada) show a similar lack of consistency with Britain or amongst themselves in defining just who are members of the Commonwealth.[76] This lack of consistency and mutual recognition make British subject status or even Commonwealth citizen status a shaky basis for reciprocal relationships between professions in different countries.

C. Comparative Background: the Right of the Alien to Practise Law in Other Jurisdictions

What requirements do other jurisdictions have with respect to national status and admission to the legal profession?

Canada

In other Canadian provinces a requirement of British subject status or Canadian citizenship is common but not invariable.

In Nova Scotia and Prince Edward Island an aspiring lawyer must be a British subject or Canadian citizen before he is even allowed to article. In Alberta, Saskatchewan and Manitoba, the requirement is identical to Ontario's -- British subject status or Canadian citizenship before admission to the law society as a full-fledged member. In Quebec and British Columbia, Canadian citizenship is required for licensing, and British subject status is not acceptable.[77]

In New Brunswick an individual may be admitted to practise if he is a Canadian citizen or someone legally resident in Canada who declares an intention to become a citizen as soon

as legally possible.[78]

In Newfoundland, there is no citizenship or national status requirement of any kind.[79]

Neither New Brunswick nor Newfoundland law societies have expressed any dissatisfaction with the results of legislation which allows non-British subjects or Canadian citizens to practise.[80]

England

Although there are numerous similarities between a lawyer's role and duties in Ontario and in England lawyers in England are not required to be British subjects.

Amendments to the Solicitors Act in 1974 removed the requirement that solicitors be British subjects;[81] such amendments were probably prompted by England's entry in the Common Market. It had been thought necessary that solicitors be subjects because they were, by tradition and by statute, "officers of the court", and at least some interpretations held that this status brought solicitors within the purview of The Act of Settlement of 1700, which prohibited non-British subjects from holding an office or place of trust under the Crown.[82] There is a strong argument that such interpretations are misguided, and that the Act of Settlement was never meant to apply to solicitors.[83] In any event, solicitors are still considered officers of the court in England and are now not required to be British subjects, and the Law Society of England reports no ill effects.[84]

Since barristers were never considered to be officers

of the court (being subject, rather, to the discipline of the Inns of Court), no requirement was ever made that they be British subjects.[85]

United States

Although aliens were admitted to practice in almost all states in the early part of the 19th century, by the 20th the situation had been reversed, and citizenship was a prerequisite to practise in most, but not all, American states.[86] Strong constitutional challenges to such provisions were mounted in the late '60's and early '70's. These challenges concentrated on one line of attack -- that such provisions were a violation of the 14th Amendment -- "equal protection" under the law guaranteed to all persons.[87] Previous case law had established that "persons" included aliens.[88] The Supreme Court had also decided that a violation of 14th Amendment rights might be allowable if a "compelling state interest" were shown in the subject matter.[89] In most of these cases, however, not only did the local committees of bar examiners fail to show a compelling state interest in preserving citizenship requirements for bar admission; they failed even to convince the courts that there was any rational connection between an applicant's fitness to practise law and his nationality.[90] Such citizenship requirements were ruled unconstitutional by the U.S. Supreme Court in In Re Griffiths[91] in 1973, and they are now not applied in any state.

Neither U.S. literature on legal education and bar

admission or correspondence which the author has had with several state bar examiners' committees indicate that the removal of the citizenship requirement had had any adverse effect on the bar.[92]

Other Countries

In most other countries of the world, but not all, citizenship of the certifying licensing jurisdiction or some special national status has been required for admission to the practice of law.[93] It should be noted, however, that in many countries which have a citizenship requirement, the areas of activity restricted to "licensed" lawyers are much narrower than in Ontario, where even the giving of advice on foreign law is considered an activity prohibited to an unlicensed person.[94]

The evolution of the European Common Market is leading to an abolition of citizenship requirements in participating European countries, although whether other transfer barriers will be lowered to enable lawyers to move from country to country remains to be seen. The Treaty of Rome, which established the EEC, provides for "freedom of establishment and services".[95] It has taken participating countries a long time to move to implement this article are far as lawyers' services are concerned, but last year an EEC Council directive was issued requiring the abolition of nationality and residence requirements as an initial step.[96]

IV. RATIONALES FOR A NATIONALITY REQUIREMENT

Now we can examine the arguments supporting a

nationality requirement.

A. "Officer of the Court"

Both Mr. Justice McRuer in his report in the Inquiry Into Civil Rights and the Attorney General in comments in legislative debates at the time of the last major amendments to The Law Society Act in 1970 relied strongly on the fact that a lawyer is an "officer of the court" to justify the necessity of lawyers being British subjects or Canadian citizens.[97] However, neither explained why it was necessary that an officer of the court be of a specific nationality, or defined what he meant by "officer of the court".

The term does not have a clear or singular meaning in common law or statute. No Ontario statute which employs the term defines it. Ontario statutes do or have designated the holders of a fairly wide variety of positions "officers of the court" -- court registrar, bailiffs, Official Guardian, court reporters, special examiners, public notaries, commissioners of oaths, barristers and solicitors and students-at-law.[98] The only common denominator among these persons is that they may all at some level be involved in the administration of justice. But the differences among them are significant. Some are employed by the State, while others, such as lawyers, notaries and special examiners, run a private business. All have a duty to the court to do their job properly in order that justice may be done, and take an oath to that effect, but some, such as the Official Guardian or registrar, have a duty only to the

court, while others such as the lawyer have a dual duty, to the court and to the client whose interests he must uphold within the law. And some officers, such as court reporters, have a singular and easily-articulated duty -- to record what is said in court accurately -- while the lawyer has a much more complex duty -- to use his various skills to the best of his ability to help his client while he aids the court in discovering what is just. The only single thing required of all those designated "officers of the court" is honesty and integrity in fulfilling their various duties.

Let us explore the solicitor's duties as an officer of the court more fully. His general duty is to further the administration of justice in the province by performing his particular role. More particularly, in our adversarial system, it is in the interests of justice that he give his client vigorous representation and deal with him honestly. It also is essential to the administration of the law that the lawyer deals honestly with other solicitors, opposing parties, and the court itself.

The case law and literature about the duties of the lawyer as an officer of the court stress that because of the court's reliance on the lawyer's honesty and the fiduciary relationship a lawyer has with his client, it is absolutely essential that he be a person of high integrity.[99] In illustrating the duties of a lawyer as an "officer of the court", it has been said that: a lawyer as an officer of the court should never renege on undertakings to other solicitors;[100]

mislead unrepresented individuals;[101] must never mislead the court in any way, as, for example, by suppressing the existence of relevant witnesses or case law unfavourable to one's client.[102] If a solicitor acts improperly in a case, a court can exercise its inherent jurisdiction over him as an officer of the court and order him to pay costs, or damages, or even strike him off the rolls.[103]

So important is the honesty of the solicitor considered that the court will scrutinize not only his conduct in the performance of his duties but all his conduct to insure that he is an honest man. For example, a court can order a solicitor to pay a private debt, unconnected to the practice of law, if it feels that the non-payment of that debt reflects on the solicitor's integrity.[104] The English Court of Appeal defended this wide-ranging disciplinary power by saying: "It is of greatest importance that transactions in which attornies are parties should be uberrimae fidei, and that those accredited as officers of the court should be above suspicion."[105]

If integrity is the key to the lawyer's fulfillment of his duties as an officer of the court, then it is difficult to understand why the lawyer's status as such an officer necessitates his being a British subject or Canadian citizen. Such an argument would rely by necessity on a discredited assumption -- that aliens as a class are less trustworthy than citizens.

If it is desired to test trustworthiness and commitment to uphold the laws of a particular jurisdiction,

surely it is far more to the point to require more direct tests of moral character, or oaths of allegiance and respect to the performance of duties, rather than a particular citizenship.[106] There should be no legal impediment to an alien being able to take such oaths, as will be discussed later.[107]

However, other arguments have been advanced as to why a lawyer as "officer of the court" should be a citizen:

a) It was suggested by Ontario's Attorney-General in 1970 and by bar examination committees in the U.S. that because a lawyer has duties connected with the administration of justice, he is in a sense a part of government, and should be required to be a British subject or Canadian citizen as legislators or judges are.[108]

As the U.S. Supreme Court pointed out, although a lawyer may have some official responsibilities entrusted by the government, they are quite different in character from those of legislators and judges and "hardly involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens."[109] It should further be pointed out that in Ontario public servants, even ones in highly sensitive positions, are not generally required to be citizens or British subjects.[110]

The nature of the lawyer's role as advocate prevents him from being cast in the role of a government office-holder, owing a special loyalty to that government. The lawyer is often required to represent those in conflict with the government, and even, on occasion, to represent foreign governments.[111]

b) It has also been suggested that a lawyer's duties

are so similar to a public officer's that he should be required to be a citizen or British subject as a public officer is required to.[112]

This argument, of course, presupposes that public officers should be of a certain nationality, which is questionable. Leaving that aside, it ignores the differences between lawyers and most other public officers, such as court registrars or sheriffs. The latter have only their duty to the public, and are government-appointed, while the lawyer has besides a public duty an important duty to his clients, and normally is engaged in a private business. The U.S. Supreme Court thought the distinction highly relevant, and expressed it in this way: "Unlike these officials (bailiffs, court clerks), a lawyer is engaged in a private profession, important though it is to our system of justice. In general he makes his own decisions, follows his own best judgement, collects his own fees and runs his own business".[113] Accordingly, if it is valid to argue that the public duties of a public officer require that he be a citizen, a lawyer should not be encompassed in this argument as his job is essentially that of a private businessman with private obligations.

Furthermore, it should be pointed out that the provincial Public Officers Act, which requires British subject status, is apparently not intended to apply to lawyers, as it first requires "public officers" to be "British subjects", and then says that public officers or barristers and solicitors shall take a particular oath.[114]

c) In some American cases it has been argued that a non-citizen lawyer is somehow less amenable to the discipline of the court or the bar association because he is an alien.[115] This argument is difficult to understand. An alien lawyer would be governed by the same statutes and rules as any other lawyer, and could be disciplined by the Law Society and the court if he was remiss.

A survey of Ontario statutes and case-law turns up many anomalies which indicate that the Legislature does not always think it necessary to require those designated as officers of the court or who hold some position of public trust in the administration of justice to also hold a particular citizenship.

1) Not all those designated as officers of the court in The Judicature Act are required to be British subjects or Canadian citizens.[116]

2) Next friends, receivers and trustees in bankruptcy have all been considered officers of the court with duties to the court, but no prohibition exists against aliens assuming these positions.[117] Trustees, arbitrators and commissioners appointed under The Public Inquiries Act, have not been considered officers of the court, but these persons do have positions which entail duties important to the administration of justice, and aliens are not prohibited from holding them.[118]

3) Commissioners of oaths, authorized to take oaths in Ontario, were until 1968 designated as officers of the court, but were not required to be of a particular citizenship.[119]

Public notaries have been recognized as officers of the court since at least 1889, but were not required to be citizens until 1962.[120]

4) Solicitors themselves, although long designated as officers of the court by common law and specifically recognized as such in statute in 1881, were not required to be British subjects before 1912 or between 1927 and 1934.[121] Barristers are not considered officers of the court by common law, and statute did not designate them as such until 1970.[122] And even today, student members of the Law Society are officers of the court, but are not required to be British subjects or citizens.[123]

These anomolies suggest that there has been little thought at the level of legislative policy-making as to how best to insure that those involved in the administration of justice have the necessary qualities and what those qualities are, and as to whether citizenship has any rational relation to possession of those qualities.

B. Oath of Allegiance

It has been suggested that an alien cannot legally take an oath of allegiance, or that he cannot take such an oath in good faith.[124]

There is little support for the first contention, and many statutes seem to recognize this. For example, provincial civil servants are required to take oaths of allegiance, but are not required to be citizens.[125] Similarly, police officers and those who serve in the armed forces can be required to take

oaths of allegiance without being citizens.[126] If in these sensitive areas of activity the Legislature considers the oath (without citizenship) to be a sufficient assurance of loyalty, it is difficult to understand why it is not sufficient in the lawyer's situation.

Taking an oath of allegiance signifies recognition of a political authority as having legitimate political power over oneself and acceptance and support for its laws.[127] There is no reason why an alien should not be allowed to do this, as has been pointed out by several U.S. jurists,[128] and indeed in some situations we require him to do so. An alien is someone who at some time in the past, either voluntarily or involuntarily, acquired citizenship in another country. But if an alien resides in Canada, we already expect him to obey our laws, and not to do anything which would hurt our government, and prescribe severe penalties for violations.[129] (The major distinction between the alien resident and citizen today lies not in the duties imposed, but in the privileges and level of protection which can be expected from the State.)[130] It seems illogical that we should object to an alien resident pledging himself to accept what we require him to accept anyway.

Nothing in either the federal or provincial acts setting out oaths of allegiance to be taken by barristers and solicitors suggests that citizenship or British subject status is a necessary qualification for the taking of the oath.[131] And recent amendments to The Citizenship Act have made it clear that the federal Parliament does not see the swearing of

allegiance to a foreign country or the holding of citizenship in a foreign country as inconsistent with the duties of a Canadian citizen and his ability to swear an oath of allegiance to the Queen.[132]

Furthermore, under present regulations, persons can be admitted to the Ontario Law Society who are "British subjects" but are from republican countries of the Commonwealth whose citizens do not owe any allegiance to the Queen, and their swearing of the oath is apparently accepted without question.[133]

In U.S. cases the question of whether an alien can sincerely take an oath of allegiance has been raised. The courts have answered that there is no logic in assuming that aliens cannot sincerely swear such an oath, and that if in some specific instance sincerity is doubted, some evaluation of that person's intention in swearing the oath can be conducted.[134] The U.S. Supreme Court in the Griffiths case pointed out that a citizen may be a relative newcomer, while an alien resident may be raised and educated in the U.S., married to an American citizen, own property in the country, pay taxes to the U.S. government, be required to serve in the army to support that government, and generally be obliged to know and obey its laws.[135] If an alien resident can have such deep roots in the country, and a citizen such shallow ones, citizenship cannot be a good basis on which to make a priori judgements with respect to sincerity of oaths of support for the country.

It is possible that applicants who are citizens of some countries may face loss of this citizenship if they take an

oath of allegiance to the Queen. Whether this will be the case depends, of course, on the laws of the applicant's home country. It is probably not true of U.S. citizens, since American case-law indicates that a U.S. citizen can only lose his citizenship as the result of a voluntary act by which he unequivocally indicates that he wishes to relinquish U.S. citizenship in favour of allegiance to a foreign state.[136] The taking of an oath of allegiance to a foreign sovereign has not been seen as sufficient in itself to indicate an unequivocal desire to expatriate.

Even though an alien has the ability to take an oath of allegiance, it is not clear that it is necessary to require him to do so to insure adequate performance of his duties as a lawyer. At present, Ontario applicants to the bar must take a Barrister's Oath pledging, in general, proper performance of a barrister's duties and in particular, an intention to "uphold and maintain" the Queen's interest "according to the constitution and law of this province".[137] If this oath were broadened to include a pledge to maintain federal law as well, it seems sufficient to ensure an alien applicant's committment to the enforcement of our laws. To require an additional pledge of personal political allegiance seems unnecessary, since, as was already mentioned, any alien resident must observe our laws, and is subject to deportation if he commits or is likely to commit a criminal offence or is reasonably suspected of any action of treason or violence.[138]

The Judicature Act does not require "officers of the court" governed by it to take an oath of allegiance, but provides that they should take an oath to perform the duties of office

faithfully and to the best of the deponent's ability.[139] Many states of the U.S. do not require an oath of allegiance, and only require an oath to uphold the state and federal constitutions.[140]

Given that the swearing of an oath of allegiance may mean that an alien applicant loses his own citizenship and that an oath of allegiance is not necessary to ensure commitment to the enforcement of our laws, it is worthwhile to examine the alternative requirement of an oath pledging the applicant to uphold the laws of the jurisdiction.

C. Knowledge of British Common Law and Parliamentary Government

In the 1970 legislative debates on The Law Society Act, the Attorney-General defended the "British subject or Canadian citizen requirement" by saying that it insured that each lawyer shared a common legal and political tradition -- the system of British common law, parliamentary government and allegiance to the Queen.[141] Members arguing that British subjects in general should be excluded and only Canadian citizens admitted felt that it was more relevant to look for a knowledge of specifically Canadian legal and political institutions in a lawyer.[142]

However, it is not necessarily the case that British subject status indicates common legal or political institutions, or even that Canadian citizenship is a good indicator of such commonalities. Kenneth Jarvis pointed out in a presentation to the Second Commonwealth and Empire Law Conference that British Commonwealth countries have different systems of law, with English common law, Roman-Dutch law or the Napoleonic Code as

bases.[143] The Law Society today does not seem to give credence to the argument that Commonwealth countries have a common legal tradition, as those trained in those countries in law are not treated any differently under Law Society rules with respect to evaluation of legal education than those trained in other foreign countries.[144] (Some other common law jurisdictions ease entrance requirements for those trained in another common law state.)[145]

Commonwealth countries also vary widely in political culture, and encompass parliamentary governments, republics, independent monarchies and dictatorships.[146] Furthermore, as was mentioned before, citizens of republican members of the Commonwealth may not owe allegiance to the Queen, as Canadians do.[147]

Canadian citizenship does not guarantee uniform legal traditions either, as the Quebec legal system is grounded in civil law, while English Canada's is grounded in common law.

Even if all of Canada had a common legal tradition, citizenship would still not necessarily be a good test as to knowledge of and commitment to that tradition. Citizenship does not guarantee long residence in a country, and neither long residence nor citizenship indicate familiarity with a country's political or legal traditions. Conversely, alien status does not indicate a lack of such knowledge. One American court commented on this point: "Neither legal competence nor ethical fitness depends upon cultural provincialism....too often even lifelong residents of a community have no knowledge of even the basic rudiments of the government units closest at hand."[148]

If a knowledge of such traditions is desirable,

surely a better indicator than national status can be found. The Law Society has already developed a test of knowledge of the common law, which it administers to transfer applicants from Quebec.[149] Or particular courses in common law subjects can be required (as they in fact are, in order to obtain a law degree from an approved Canadian law school, which is a prerequisite for the bar admission course.) Familiarity with political institutions and traditions can also be tested (as it is in New York State)[150] or taught in required courses.

Dissenting judges in the Griffiths and Sugarman case in the U.S. Supreme Court raised the argument connecting citizenship with a desired legal and political tradition to another level, suggesting that lack of U.S. citizenship could imply ethical deficiencies.[151] For example, it was suggested that in some countries lawyers are bound to put the government's interests ahead of the client's, or bribery may be an accepted practice in legal disputes, and that citizens of those countries would be unsuited to practise law in the U.S. Again, this simply seems to be a restatement of the argument that aliens are, as a class, less trustworthy than citizens.

Citizenship is not a good indicator of morality, or even of professional ethical traditions. The protection offered by the provincial Human Rights Code to those of different nationalities in employment and housing seems to affirm Ontario's commitment to this premise.[152]

D. Reciprocity among Commonwealth Countries

In the '70 debates on The Law Society Act, the Attorney-General also defended "British subject status" requirement on the basis of there being reciprocal agreements between countries by which Canadians received preferential treatment compared to those from non-Commonwealth countries in applications to the bar in other Commonwealth countries.[153] Repudiating the preferential treatment Ontario gives to British subjects was almost equivalent to revoking "an international convention between Commonwealth countries", he said.

This is not factually correct. Mr. Jarvis' report on transfer rules in the Commonwealth in 1960 showed that there was little uniformity, and that members of the Commonwealth did not necessarily accord any special status to applicant lawyers from other Commonwealth countries.[154] This holds true today. For example, Britain does not necessarily accord preferential treatment to applicants from Commonwealth countries.[155]

Ontario for a long time provided for reciprocal recognition between certain (but not all) Commonwealth countries as a basis for admission of transferring barristers and solicitors, but any requirements which were premised on reciprocal recognition were deleted by the early 1960's.[156] Admission transfer policies giving priority to those licensed in certain Commonwealth countries were abolished in 1975.[157]

Both Mr. Justice McRuer and Kenneth Jarvis, present Secretary of the Law Society of Upper Canada, have argued in the past against rules governing admission to the legal profession

based on reciprocity between jurisdictions. Mr. Justice McRuer rejects the approach because it is not directly concerned with assessing the competence of an applicant, and focuses on insuring that Ontario lawyers have privileges in another jurisdiction equal to those accorded by Ontario to lawyers from that jurisdiction.[158] Mr. Jarvis has a somewhat different criticism; he dislikes the reciprocal approach not because "it is wrong per se" but because "it ignores the specific qualifications of the individual applicant."[159] The Law Society had found that individual applicants licensed in the same jurisdiction varied widely in educational qualifications.[160]

Since the question of nationality is not relevant to competence, however, it would be possible to establish a reciprocal rule with respect to the nationality of the applicant, however, and still require the applicant to undergo an individual assessment as to his qualifications and to complete whatever additional training was thought necessary. In other words, a reciprocal agreement with respect to admission to the legal profession would not have to cover every condition of admission.

The major justification which can be offered for control of transfer rules by reciprocal agreement is that it allows fuller control by the government of the supply of legal services. The most accepted rationale for regulation of admission to the professions has been the protection of the public from incompetent or dishonest practitioners.[161] Regulation solely to put a ceiling supply of legal services does not at first glance seem to serve the public interest, as a greater supply

would at least theoretically mean lower costs to the client. Such regulation would primarily serve the interests of present members of the profession.

It could be argued that professional services deserve protection from undue competition in the same way that many Canadian industries are protected, through reciprocally negotiated trade and tariff agreements. The analogy is faulty. Foreign industrial concerns involve foreign based plants which may have lower costs of production and which pay wages to foreign workers and retain profits in foreign countries. An alien lawyer who wishes to practise in Ontario, even if he had to meet no nationality requirement, would still be living in Ontario, would pay wages to Ontario employees and presumably would spend or invest a large part of his income where he lived. He would have to meet the same educational and training standards as any other Ontario lawyer. Before admission for residence in Canada, immigration authorities would have to satisfy themselves that there was a sufficient demand for a lawyer in the area in which he proposed to settle.[162]

A reciprocal agreement might be more useful if it was proposed that it include negotiation of educational and training standards and was concomitant with a loosening of federal regulations governing work in Canada by aliens, since such a change would entail exposure of the Ontario legal profession to possibly strong competition from non-resident lawyers. Members of the European Economic Community are in the process of negotiating an agreement as to what services lawyers from

member countries can perform in another country.[163]

V. CONSTITUTIONALITY

Putting aside the question of whether it is sensible or desirable to require citizenship or British subject status of lawyers, it must be considered whether it is constitutional for a provincial government to legislate such requirements. The precise issue as to whether a province can exclude aliens from access to the bar because of their alienage has never been litigated, but the general issue as to whether the province can exclude aliens from certain types of work has been before the courts, and no definitive answer has resulted.

A. Constitutional Issues

The constitutional framework for the debate is as follows: Provincial legislation restricting the ability of aliens to work has usually been justified under s.92(13) of The British North America Act, which gives the province the exclusive right to legislate with respect to "property and civil rights in the province" and which clearly justifies general regulation of the professions.[164] Such legislation might also conceivably be justified under s.92(14), giving the province the right to legislate with respect to the "administration of justice" in the province, including the "constitution, maintenance and organization of the provincial courts". (In support of this, one might draw on previously mentioned arguments that a lawyer is an "officer of the court"

with important duties to the court, and go on to argue that specification of the lawyer's qualifications as an officer of the court is certainly rightly characterized as legislation about the constitution and organization of the courts.)

Irrespective of which head of s.92 is used to justify such legislation, the objection can be taken that this "trenches" on the Dominion's exclusive power given by s.91(25) to legislate with respect to "naturalization and aliens". Section 91 gives Dominion legislation an interpretive priority in its concluding paragraph, which states that any matter specified as being exclusive to the Dominion shall not be deemed to come within those classes of subjects reserved to the provinces. One central question with respect to legislation restricting the practice of law to those of a particular nationality is whether, although it may touch on a matter for Dominion legislation, it has a valid provincial aspect. If such legislation does have a valid provincial aspect, courts will uphold it.

In order to understand the scope of federal authority in the area of aliens and naturalization, one must also consider that s.95 gives the provinces and the Dominion joint authority in the field of immigration, but provincial legislation in this area is only effective insofar as it is not repugnant to Dominion legislation. The Dominion has occupied the field of immigration,[165] and any attempts to justify legislation restricting the work opportunities of resident aliens under the province's power to legislate with respect to immigration would obviously fail.

One must also consider, however, whether otherwise valid provincial legislation under 92(13) or (14) trenches impermissibly on the Dominion's immigration power. The Immigration Act and regulations set out detailed rules as to who can come into Canada, and under what circumstances they may pursue employment here.[166] No restrictions as to work are placed on landed immigrants (aliens admitted for permanent residence in Canada) as there are on those with other types of visas. It could be questioned whether provincial legislation which imposes such restrictions is valid, in that it restricts the ability of these persons to settle in Canada by restricting their opportunity to earn a living in a way in which citizens are not restricted. This argument was explicitly acknowledged by the British government at the turn of the century when a B.C. statute requiring that no employer should employ anyone who could not read in a European language was disallowed.[167] It has also been considered several times in U.S. courts (the federal government in the U.S. has exclusive authority in matters of immigration), who have generally seen state-imposed limits on a legally-admitted resident alien's ability to work as an unjustified interference with the federal government's broad power to admit aliens and decide the terms and conditions of their admission.[168]

There has been no major judicial decision which has considered the constitutionality of provincial legislation with respect to property and civil rights which impinged upon the federal power under s.95 to legislate in the field

of immigration, but it is submitted that analysis of the problem need be no different than that concerning a similar conflict between such provincial legislation and the federal power to legislate with respect to aliens and naturalization under 91(25); these two federal powers seem complementary, designed to enable the Dominion to develop comprehensive legislation with respect to newcomers' entry and absorption into Canadian society, and not of a different order of paramountcy.

B. Some History

The major constitutional battles in Canada over legislation limiting the ability of aliens to work have been fought in cases which explored the question of whether such legislation unjustifiably trenched on the Dominion power with respect to aliens and naturalization, or whether it had a justifiable provincial aspect as legislation with respect to property and civil rights.

The first major decision, Union Colliery v. Bryden,[169] concerned the validity of a statute regulating the operation of mines in B.C. which prohibited the employment of "Chinamen" (as well as some other classes of persons, such as children). The Privy Council stated that this was in pith and substance a prohibition affecting only aliens or naturalized subjects, and thus objectionable as the Dominion's power under 91(25) encompassed the power as to what the rights and privileges of naturalized subjects should be.

Cunningham v. Tomey Homma[170] was a later Privy

Council decision which did not concern aliens' right to work, but rather to vote in provincial elections. Nevertheless, it has been often cited in the debate on the constitutional validity of provincial legislation on aliens' right to work, perhaps mistakenly. The case concerned the validity of a provincial law prohibiting any Japanese (whether alien, naturalized or native Canadian) from voting in provincial elections. The court stated that 92(1), which places the constitution of the province under the exclusive control of the province, justified the provisions, and dealt with the contention that such a provision trenched on the Dominion's powers as to naturalization and aliens by stating that 91(25) only reserved to the Dominion the right to define these statuses, and that the power to dictate the consequences or at least "privileged" consequences which follow from either was not included.[171] It was acknowledged that the Dominion had the right to legislate for "the right of protection and the obligations of allegiance" as a result of naturalization, but this was allowed only because it was a strictly necessary consequence of the status.

The court in Tomey Homma purported to distinguish its decision from that in Union Colliery by saying that the legislation in the former case was not a legitimate regulation of an industry but was devised to deprive the Chinese of the "ordinary rights of the inhabitants of British Columbia"; legislation in Tomey Homma involved a "privilege":[172] the right to vote in the province. To suggest that the Dominion

power with respect to aliens and naturalization is confined to defining the terms and the inherently necessary consequences, but does not encompass legislation as to the more general and meaningful consequences of these statuses, seems to circumscribe federal power in this respect much more narrowly than is justified by either the wording of 91(25) itself, or the concluding general paragraph of section 91. It is also a line of interpretation of The B.N.A. Act not very often taken with respect to other provisions of 91 or 92; s.91 states that federal authority to legislate is inclusive of matters coming within certain classes of subjects, and there is nothing in the Act indicating the power should be confined to defining the contents of the class of subjects.

It does not aid the Tomey Homma analysis very much to change its tone slightly by saying that federal power with respect to aliens and naturalization covers legislation as to "rights" but not "privileges" which flow from these statutes. (e.g. the "right" to work v. the "privilege" of voting in provincial elections.) Whether something is a right or a privilege is a matter of law and not a priori categorization, and it is being recognized in courts in the U.S., England and Canada that the distinction itself is unhelpful in most judicial considerations.[173]

It is suggested that a closer analysis of s.92(1) helps to reconcile Tomey Homma and Union Colliery. That subsection includes a qualifying phrase -- "notwithstanding anything in this Act" -- which is absent from any other subsection

of 92 and would seem to protect legislation validly enacted under it from the charge that such legislation infringed on Dominion power.

In a later case, Quong-Wing v. The King,[174] the Supreme Court of Canada relied on the decision in Tomey Homma to interpret the Union Colliery case and stated that 91(25) "does not purport to deal with the consequences of either alienage or naturalization."[175] That case concerned legislation which prohibited employment of white women by "Chinamen", and the court said it concerned a matter of property and civil rights -- the right to employ white women and the conditions under which they could be employed -- and could also be characterized as an attempt to deal with a strictly local situation, valid under 92(16).

The matter was further considered by the Privy Council in the '20's when B.C. passed legislation prohibiting the employment of Japanese or Chinese on publicly-owned lands, even by private operators leasing those lands. In Brooks-Bidlake and Whittall v. A.G. for British Columbia[176] the legislation was upheld, the court finding that it did not trench on 91(25) since it was not directed towards the regulation of aliens or naturalized citizens (Japanese and Chinese born in Canada were included), but was a legitimate effort by the province to manage its own property under 92(5).[177] The statute was disallowed, and a later case considering its constitutionality generally upheld the ratio of Brooks-Bidlake, but suggested that it would be unconstitutional if re-enacted on

another ground, in that it violated a treaty made between the Dominion and Japan promising equal treatment for Japanese subjects in Canada, and thus trenched on the Dominion's power under s.132 to perform obligations incurred under foreign treaties.[178]

The conflict between federal power to legislate with respect to aliens and naturalization and the provincial power to legislate with respect to property and civil rights has not been tested in recent times in litigation concerning the right to work, although it has in questions concerning the right to hold property. In Morgan v. P.E.I.[179] the Supreme Court ruled that a province could validly legislate restrictions against non-residents of the province (whether aliens or citizens) with respect to their purchase of property within the province as long as all non-residents were treated as being in the same class. The distinction made was similar to that made in some earlier cases involving Orientals and the right to work, where legislation with respect to certain classes was seen as not trenching on 91(25) because the classes were defined in terms of racial groups, rather than as aliens and naturalized citizens (which would be included in but not comprehensive of the class).

C. Some Suggestions

It is suggested that a useful constitutional analysis of the whole problem of provincial limitations on the opportunities of aliens or naturalized citizens to work must

start from a point which recognizes the Dominion's 91(25) power as a meaningful one, which in conjunction with the federal immigration power would give it the right not only to specify who would be considered aliens or naturalized citizens and what the naturalization process will consist of, but also to specify the functional meaning of those terms -- that is, from what activities or statuses a person in these categories should be prohibited, or what requirements he must fulfill before he can enjoy them.

There is no doubt that the provinces may legislate with respect to admission into and government of the professions under their 92(14) powers. The relevant constitutional question to be asked about such provincial legislation when it has special provisions directed to aliens is whether these provisions have a valid provincial aspect. Are such provisions, although they touch on a class of subjects within exclusive federal jurisdiction, more correctly characterized as legitimate attempts to perform a job which has been assigned to the provinces: the regulation of the professions? To answer this question, one must of necessity consider whether there are legitimate reasons to require members of a profession to be of a particular national status, and the touchstone which should be used in considering legitimacy is the avowed purpose of such legislation: the protection of the public. More particularly, with respect to Ontario's provision that all lawyers must be British subjects or Canadian citizens, one must evaluate the arguments advanced to justify this requirement -- for example,

the assertion that a lawyer is an "officer of the court" and therefore should be a British subject.

One doctrine which we could borrow from the U.S. which might be useful in developing a constitutional analysis in this area is that of "compelling state interest". Under the U.S. constitution all persons -- and this includes aliens -- are guaranteed equal protection under the law, and as a general rule, a state cannot legislate, even in areas in which it has authority, in ways that deny that equal protection.[180] Legislation of this type may be allowed, even though it violates the principle of equal protection, if the state can demonstrate that there is not only a legitimate, but a compelling reason why it must do so in pursuit of valid objectives under its legislative authority.[181] Even when a compelling state interest is shown, discriminatory provisions must be drawn as narrowly as possible in order that no unnecessary violations of the equal protection clause should be sanctioned.[182] This approach suggests one way of dealing with inevitable jurisdictional conflict which can arise in a federal system in which two legislative authorities pursue legitimate legislative goals into overlapping areas of activity.

VI. THE ONTARIO HUMAN RIGHTS CODE AND NATIONALITY REQUIREMENTS

The Ontario Human Rights Code prohibits discrimination in all phases of employment because of "nationality"; this includes discrimination in job recruitment, training, and apprenticeship, maintenance of any employment category which,

by its description, excludes a person from employment, and any discrimination in "any term or condition of employment."[183] The Code is unusual in including nationality as a prohibited grounds of discrimination. The only other human rights legislation in the country which does so is the Saskatchewan Bill of Rights; all other rights legislation, including the Canadian Bill of Rights, uses instead the term "national origin" or "place of origin", which does not by legal definition encompass citizenship as the concept of "nationality" does.[184]

The provisions in the Code governing discrimination in employment are drawn so widely that it initially appears as if it could encompass discrimination in the licensing process in a self-governing profession, since licensing is a necessary condition of employment as a professional in some occupations. However, since there are no provisions in the Code giving its provisions precedence over other more specific legislative provisions prescribing certain types of discrimination[185] -- for example, nationality requirements in The Law Society Act -- the general rules of statutory interpretation would probably lead a court considering a conflict between two statutes to the conclusion that an express and clear legislative provision pertaining to nationality requirements was not repealed merely by implication by the general provisions of the Code, which prohibit such discrimination in employment by "any person".

Any debate as to whether Parliament meant these provisions in the Code to apply to the self-governing professions was settled in 1972, when an amendment to the Code addressed the

question of discrimination in membership in the self-governing professions specifically, and omitted any reference to "nationality" from the prohibited grounds of discrimination,[186] although that term is used in the general section as to discrimination in employment as well as the section with respect to discrimination in trade union membership.

The Human Rights Commission's recent report on and evaluation of the Code in operation did not address the question of whether any amendment was desirable to the Code provision as to membership in the self-governing professions. The report did, however, state that the Commission had been requested by several groups to delete nationality from the prohibited grounds of discrimination in general employment. It was argued, for example, that Chinese restaurants ought to be able to give preference in hiring to Chinese waiters.

The Commission had concluded that in general it was not a legitimate grounds for discrimination and should continue to be prohibited, and observed that many legally resident aliens are suffering because of such discrimination.[187]

VII. NATIONALITY REQUIREMENTS AND MEMBERSHIP IN THE GOVERNING BODY OF A SELF-GOVERNING PROFESSION

Assuming acceptance of the proposition that there is no good reason to require members of any self-governing profession -- including law -- to be of a particular nationality, does this proposition necessarily apply to the question of membership on the governing bodies of these professions?

Mr. Justice McRuer's answer was that because these governing bodies exercise delegated legislative powers, their members should possess the same qualifications as members of the Legislature.[188] Members of the provincial legislature are required to be British subjects or Canadian citizens (as are voters).[189] The federal government removed "British subject" privileges in this area in 1975, and now requires Canadian citizenship to hold office or vote.[190]

At present, there is no special nationality requirement to sit on the Registration Board of the OAA[191] or to be a bencher of the Law Society, but in general only members of the professional association are eligible to sit on their governing bodies and there are nationality requirements for membership in these associations. An exception occurs in the case of lay benchers for the Law Society, for whom there are perhaps inadvertently no nationality requirements.[192] Although there is no nationality requirement for membership in the Association of Professional Engineers of Ontario, to sit on the APEO governing Council one must be a British subject or Canadian citizen.[193] There are no nationality requirements for membership in the Public Accountants Council,[194] which exercises delegated legislative powers with respect to public accountants.

The major reason behind a grant of delegated legislative power is usually a desire for a "sub-legislative" body with expertise in the area concerned which can respond more quickly to changing needs requiring legislative change than the legislature can. Where membership in the governing

body of a self-governing profession is concerned, experience in and knowledge of the profession as well as sensitivity to the public, or in the widest sense, client interest vis-a-vis the profession, seem to be essential requirements. It is difficult to see why Canadian citizenship or lack of it should be a reliable indicator as to possession of these qualities, or should itself be a relevant factor in the competent performance of legislative duties, unless one assumes that an individual's political accountability in the exercise of these powers is somehow diminished because he lacks citizenship.

The Ontario government seems to feel that a non-citizen is less politically accountable and is generally less likely to act in a way which would benefit the Ontario public. Concerns have been expressed about the influence which foreign interests have over the province's economic, social and cultural life, and within the last ten years measures have been taken to, for example, restrict aliens' participation on the boards of directors of Ontario companies,[195] and aliens' membership on public governing bodies such as university governing councils.

It is submitted that the serious concerns about the possible lack of political accountability of an alien sitting on the governing body of a profession generally relate to individuals who would not be resident in Canada, or who would have no strong ties with Canada and whose major commitment and identification would be to a foreign country. The same concerns do not arise with an alien admitted for permanent residence in Canada who actually makes his home here. A permanently resident

alien sitting on a governing body would be subject to the same legislation as a citizen with respect to election, or appointment, exercise of powers, and formal sanctions for misuse of powers and would also be subject to the same informal sanctions -- from other members of the governing body or of the profession in general, from the press, the government, and members of the public. Any resident alien would be subject to the scrutiny of the government or fellow professionals before election or appointment. Recent amendments to Ontario's Business Corporations Act have recognized the significant differences between aliens who are permanently resident in this country and those who are not; a provision that the majority of the directors of an Ontario Corporation be Canadian citizens resident in Canada was amended in 1974[196] to provide that the majority be Canadian residents (including aliens admitted for permanent residence) ordinarily resident in Canada.

It is suggested that membership on the governing bodies of the self-governing professions be open to all Canadian residents,[197] including aliens admitted for permanent residence to Canada.

VIII. OTHER FACTORS CONTROLLING ENTRY OF ALIENS TO THE LEGAL PROFESSION

If The Law Society Act were amended to permit resident aliens (landed immigrants) to be members of the Society, should we expect a flood of additional candidates in a profession that some are suggesting is already glutted?

Several factors would indicate not. American statistics from state bars which admitted non-citizens before the Griffiths decision showed a negligible number of such applicants.[198]

Even if the requirement for Canadian citizenship or British subject status is removed, alien applicants will of course still have to melt educational and training, moral character and age requirements for admission to the legal profession. No standards ensuring competence will be lowered. Present regulations allow a direct transfer to practise in Ontario by lawyers who are members of a law society in another Canadian province, but no direct transfer is allowed by lawyers on the basis of membership in any foreign law society.[199] Candidates for membership in Ontario's Law Society must graduate from a law course in a Canadian university which is approved by convocation and complete the Bar Admission programme, which consists of a 12-month period of articling in Ontario and a 7-month period of attendance at the Bar Admission Course and successful completion of bar exams.[200] One to two years advanced standing may be given applicants with good foreign law degrees by Ontario law faculties.[201] These requirements mean that a foreign applicant who has received his legal training outside Canada will have to spend one to two years at a Canadian law school as well as 19 months in the Bar admission programme.

Stricter transfer rules, plus stricter federal immigration regulations with respect to independent applications for permanent residence mean that one large potential source of

non-citizen applicants -- those trained and already licensed in a foreign jurisdiction -- has almost dried up. And even in the years when both Society transfer rules and immigration regulations were looser, the number of foreign transfers into the Society was insignificant compared with the overall numbers admitted to the bar.[202]

This suggests that when we talk about deleting citizenship requirements for membership in the Society, the group we are primarily concerned with is made up of persons who have probably received most or all of their legal training in Canada and who are not specifically coming to Canada to work, but are already living in Canada because they are child, spouse, or other close relative of a Canadian citizen or landed immigrant. The American experience confirms this suggestion; most aliens who have applied to the bar there have not practised previously in another country, and have received most of their legal training in the U.S.[203]

IX. CONCLUSION

The rationale for requiring "professionals" to be Canadian citizens or British subjects is based on mores no longer acceptable to most people and contrary to Ontario's public policy. Are lawyers a special case, an exception to the rule? The arguments of those who say "yes" are unclear, and lack strong support in historical tradition or comparative practice. It has been suggested that competence and trustworthiness are the two essential characteristics to "ensure" in a lawyer for protection

of the public, and citizenship is a valid indicator of neither of these traits.

Abolition of the nationality requirements for lawyers would allow an unknown number of otherwise-qualified persons -- many of them probably Canadian residents of some years -- to be admitted to practice.

But a deletion of nationality requirements in the legal profession would do more than correct inequities in personal situations. It could initiate a gradual lowering of barriers among solicitors of other countries which have strong economic, legal or historical ties. This is already happening in EEC countries. Several client groups could benefit from increased flexibility in all transfer rules between countries, but the primary beneficiaries, of course, would be clients with international business to transact. Legal literature has noted a growing need among such clients for "comparativists" to complement and work with legal practitioners within particular jurisdictions. These comparativists could help "translate" between different legal systems on questions like licensing, arbitrations, tax and anti-trust laws.[204] By Ontario standards, this work would be included in the "practice of law" and they would have to be licensed in Ontario to work.

Abolition of nationality requirements for admission to the practice of law seems philosophically as well as legally justifiable, and would serve a useful purpose.

X. RECOMMENDATIONS

1. It is recommended that persons wishing to apply for admission to the legal or architecture professions in Ontario not be required to have Canadian citizenship or British subject status or to declare an intent to acquire either status.

2. It is recommended that applicants to the legal profession not be required to swear an oath of allegiance to the Queen, and that an oath to uphold and maintain the constitution and laws of Ontario and Canada and to fulfill the duties of a barrister and solicitor as an officer of the court be sufficient.

3. It is recommended that membership on the governing body of a self-governing profession be open to persons ordinarily resident in Canada (or in Ontario, if such a requirement is made of general members) who have been admitted to Canada for permanent residence.

FOOTNOTES

1. The Law Society Act, R.S.O. 1970, c.238, s.28(c).

2. The Architects Act, R.S.O. 1970, as amended, c.27, s.5(1)(e).

3. See Appendix C to Research Directorate's Staff Study, "History and Organization of Architectural Profession in Ontario".

4. The problem is noted by Harry Arthurs in his article "Authority, Accountability, and Democracy in the Government of the Ontario Legal Profession", (1971), 49 C.B.R. 1 at 4.

5. This could be true of lawyers certified in New Brunswick or Newoundland. Infra, p.29.

6. The Canadian Citizenship Act, R.S.C. 1970, c.C-19, s.5.

7. This amendment came into force February 15, 1977. See The Citizenship Act, S.C. 1974-75-76, c.108, s.5.

8. See The Immigration Act, R.S.C. 1970, c.325, as amended. Also from interview with Mr. S. Noble, Foreign Service Liaison Officer, Department of Manpower & Immigration, March 28, 1977.

9. The Citizenship Act, S.C. 1974-75-76, c.108, s.5(2). A new amendment will not allow any time spent in Canada before granting of permanent resident status to count towards citizenship at all. See The Immigration Act, S.C. 1976-77, c.52.1, s.128(2), not yet in force.

10. Ontario, "Certification and Post-Secondary Education", a study for the Commission on Post-Secondary Education, 1972. For a U.S. view see Benjamin Schimberg, Occupational Licensing and Public Policy, (Princeton, N.J.: Educational Testing Service, 1972), a study prepared for the Manpower Administration, U.S. Department of Labor.

11. Government of Ontario, Committee on the Healing Arts, Report, Vol. 3, (Ontario: Queen's Printer, 1970), p. 51.

12. Ontario, "Certification and Post-Secondary Education."

13. Government of Ontario, Royal Commission on the Inquiry Into Civil Rights, Report No. 1, v. 3, (Ontario: Queen's Printer, 1968), pp. 1176-77.

14. Infra, pp. 8-12.

FOOTNOTES (cont'd)

15. R. Sampat-Mehta, International Barriers, (Ottawa: Harpell's Press, 1973), pp.1-2. This upsurge is also commented on in David Corbett, Canada's Immigration Policy, (Toronto: University of Toronto Press, 1957), pp.120-121, and R. Harney and H. Troper, Immigrants: Portrait of an Urban Experience, 1890-1930, (Toronto: Van Nostrand Reinhold, 1975), Preface.

16. Harney and Troper, ibid., See also H. Troper, Only Farmers Need Apply, (Toronto: Griffin House, 1972), which considers in detail the working of this policy.

17. H. Troper, "Immigration: An Historical Perspective", (1976-77) 16 Human Relations, p.9. See also D. Corbett, op. cit., pp.58-59.

18. Harney and Troper, op. cit., Preface.

19. H. Troper, "Immigration: An Historical Perspective", op. cit., pp.9-10.

20. Harney and Troper, op. cit., p.53.

21. H. Troper, "Immigration: An Historical Perspective", op. cit., pp.9-10.

22. Ivan Head, "The Stranger in Our Midst", (1964) 2 Canadian Yearbook of International Law, 107 at 113-125. See also H. Troper, ibid. pp.7-8, on the treatment of Irish immigrants to Canada in the 19th century.

23. Harney and Troper, op. cit., Preface.

24. Ibid.

25. D. Corbett, op. cit., pp.33-34.

26. Marilyn Barber, ed., J.S. Woodsworth, Strangers Within Our Gates, (Toronto: University of Toronto Press, 1972) p.xv.

27. Ibid., ch.19 on "Effects of Immigration." Woodsworth, in passing, p.188, quotes an Ontario Cabinet Minister who complains that "foreigners" are straining the capacity of mental hospitals in the province.

28. Ibid., J. Conn, "Immigration", (July, 1900) Queen's Quarterly, as quoted by Barber in introduction.

29. These restrictions are noted in: Note, "Restrictions on Aliens' Right to Work", (1957), 57 Columbia Law Rev. 1012, at 1021-1027, and in Volker Knoppke-Wetzel, "Employment Restrictions and The

FOOTNOTES (cont'd)

29. (cont'd) Practice of Law by Aliens in the U.S. and Abroad", (1974) 5 Duke Law Journ. 871, at 872-876. The justification of protection for public morality was seen in Quong-Wing v. The King (1914), 49 S.C.R. 440, in which a statute prohibiting "Chinamen" to employ white women was seen as a legitimate measure "to ensure their protection from a moral standpoint."

30. See Volker Knoppke-Wetzel, op. cit., p.875, and Note, "Employment Restrictions and the Practice of Law by Aliens", pp.1016-1021. For a Canadian example of this theory, see Brooks-Bidlake & Whittall v Attorney General of British Columbia, [1923] A.C. 450 (P.C.), where it was held that the province could legitimately prohibit the employment of certain Oriental workers on government property by lessees.

31. For example, see R.v. Victoria: Re Mock Fee, (1888), 1, B.C.R. (Pt.II) 331, which concerned regulations prohibiting grant of pawnbroker's licence to certain aliens. Also see Ivan Head, op. cit., p.128, who notes that after a Supreme Court of Canada decision approving constitutionally the province's right to exclude certain nationalities from the Franchise, that inclusion on the Votor's list became a prerequisite for many professions and occupational licences -- a Canadian type of "grandfather clause."

32. Quong Wing v. The King, op. cit.

33. Brooks-Bidlake & Whittall v. Attorney General of British Columbia, op. cit.

34. R.v. Wing Chong (1885), 1 B.C.R. (pt.II) 150.

35. Tai Sing v. Maguire (1878), 1 B.C.R. (Pt.I) 101.

36. 1897, 60-61 Vict., c.11. This Act is still in force today.

37. Harney & Troper, op. cit., p.176.

38. The Public Officers Act, 1909, 9 Edw. VII, c.5.
The Stationary Engineers Act, 1909, 9 Edw. VII, c.65, s.1.

39. The Barristers Act, 1912, 2 Geo. V, c.27, s.3.
The Solicitors Act, 1912, 2 Geo. V, c.120, s.6.

40. The Architects Act, S.O. 1935, c.90, s.8.

41. The Barristers Act, R.S.O. 1927, c.128, s.2.
The Solicitors Act, R.S.O. 1927, c.194, s.3.

FOOTNOTES (cont'd)

42. The Barristers Act, S.O. 1934, c.54, p.3. A similar change was enacted in The Solicitors Act in this year.

43. See M.R. Konvitz, The Alien and the Asiatic in American Law, (Ithaca, N.Y.: Cornell University Press, 1946), p.172, and W. Gellhorn, Individual Freedom and Government Restraint, (Baton Rouge, Louisianna, Louisianna State University Press, 1956), p.110. The Law Society of Upper Canada was early accused of such protectionism by Lord Durham in his 1839 Report on Canada at p.123, where he suggested that the Society wanted to maintain "not merely a monopoly of profit, but to a considerable extent a monopoly of power which the present body of lawyers contrivesby means of this exclusion to secure to themselves."

44. Konvitz, op. cit., p.176.

45. H. Troper, "Immigration: An Historical Perspective", op. cit., p.11.

46. Government of Ontario, Royal Commission on the Inquiry Into Civil Rights, Report, op. cit., pp. 1176-77.

47. Infra, pp.49-51.

48. Such a rationale certainly supported the early Brooks-Bidlake & Whittall decision about use of Crown lands. This view was strongly held by many state legislatures in the U.S., and was used to justify statutes which denied resident aliens welfare benefits (Graham v. Richardson, 403 U.S. 637 (1973)), or employment on public works projects (Purdy & Fitzpatrick v. State, 456 P.2d 645 (1969)), or employment in the municipal civil service (Sugarman v. Dougall, 413 U.S. 634 (1973)), and in the 1960's and 1970's, U.S. courts, including the U.S. Supreme Court, found that such legislation was a denial of the "equal protection" guaranteed all "persons" in the 14th amendment to the Constitution.

49. Supra, pp.3-4, note 11.

50. Infra, pp.40-49.

51. These arguments were all referred to by the Attorney General in 1970 debates in the House before the last major amendments to The Law Society Act, see Ontario, Legislature of Ontario Debates (1970), 3rd session at 3237-3249.
Comparable arguments were used in the U.S., and are ably reviewed in Raffaelli v. Cttee. of Bar Examiners, 496 P.2d 1264 (1972).

FOOTNOTES (cont'd)

52. The Barristers Act, 1912, 2 Geo. V, c.27, s.3.
The Solicitors Act, 1912, 2 Geo. V, c.120, s.6.

53. See 1792, 32 Geo. III, c.1, and 6 Hals. Laws of England (4th Ed.) 598.

54. See I. Head, op. cit., at 113-125, where he illustrates that the concept of "alienage" itself was unclear at this time in Upper Canada, and that American immigrants, whose status was unclear, had an unchallenged right to hold property and a disputed but protected right to vote.

55. Wm. Riddell, The Bar and the Courts of the Province of Upper Canada or Ontario, (Toronto: MacMillan, 1928), p.3. This practice was quickly corrected by government ordinance.

56. 1785, 25 Geo. III, c.4. See also Wm. Riddell, The Legal Profession in Upper Canada, (Toronto: The Law Society of Upper Canada, 1916), pp.4-9 for a discussion of the effect of this legislation.

57. Ibid. Also see 1794, 34 Geo. III, c.4 (U.C.), and C.H. Armstrong, The Honourable Society of Osgoode Hall (Toronto: Clarke, Irwin, 1952), pp.19-20, who makes it clear that these 16 later formed the nucleus of The Law Society of Upper Canada.

58. 1797, 37 Geo. III, c.13 (U.C.). Also Wm. Riddell, The Legal Profession in Upper Canada, op. cit., p.9.

59. C.H. Armstrong, op. cit., p.21.

60. I. Head, op. cit., pp.113-125, comments on the battle on this between the British Foreign Office, which refused to recognize, after the American revolution, that Americans did not still owe allegiance to the British sovereign, and Upper Canada Loyalists, who resented Americans who might have fought against them in the War of 1812 being classed as British subjects and allowed to vote in Upper Canada if they immigrated.

61. Wm. Riddell, The Legal Profession in Upper Canada, op. cit., p.22. Riddell notes the defeat of a bill requiring that candidates for L.S.U.C. be British subjects of skill demonstrated by performance on an exam, and instead an Act was passed requiring exams of both barrister and solicitor candidates with no mention of nationality.

FOOTNOTES (cont'd)

62. For example, 1822, 2 Geo. IV, c.5, (U.C.), amended rules for transfer and qualification of English, Scots & Irish barristers to apply only if reciprocal privileges were granted to U.C. barristers. These reciprocal provisions continued at least until 1957. Clear copies of L.S.U.C. rules for some periods are unavailable, but the Society's 1941 Rules of The Law Society of Upper Canada, posted in Osgoode's Great Hall Library and amended to 1957, include reciprocal transfer provisions. The transfer rules as summarized by K. Jarvis in 1960 do not, so apparently an intervening amendment changed the position. See K. Jarvis "Transfer of Lawyers within the Commonwealth", Record of the Second Commonwealth & Empire Law Conference, (London: Sweet & Maxwell, 1962), pp.365-367.
These reciprocal rules were applied to those attempting to transfer from other British Canadian colonies. E.g. Wm. Riddell, The Bar of the Province of Upper Canada or Ontario, op. cit., p.83, notes that applicant solicitors from Lower Canada and Newfoundland were in 1829 rejected by L.S.U.C. because reciprocal treatment was not accorded U.C. solicitors in those jurisdictions.

63. The Barristers Act, 1912, 2 Geo. V, c.27, s.3.
The Solicitors Act, 1912, 2 Geo. V, c.120, s.6.

64. The Law Society Act, R.S.O. 1970, c.238, s.28(c).

65. The Citizenship Act, R.S.C. 1970, c.C-19, s.21.

66. See Ontario, Legislature of Ontario Debates (1970), 3rd session at 3237-3249.

67. See The British North American Act, 1867, 30 & 31 Vict., c.3, s.91(25) as consolidated in B. Laskin, Canadian Constitutional Law, (4th Ed.) (Toronto: Carswell, 1973) and Laskin's comments at p.863.

68. J. Salmond, "Citizenship and Allegiance", (1902), 18 Law Quarterly Review 49.

69. Laskin, op. cit., at 863, notes that the Dominion could not take legislative action which would give full meaning to Canadian citizenship before the Statute of Westminster, 1931. See also Cuthbert Joseph, Nationality & Diplomatic Protection - The Commonwealth of Nations, (Leydon: A.W. Sijthoff, 1969), comments on p.100 on problems which the characterization of Canadians primarily as British subjects caused when Canada wanted to deal within the League of Nations as a separate nation.

FOOTNOTES (cont'd)

70. Paul Martin commented in 1945 that federal law at that time was in confusion with respect to the meaning of "Canadian citizen", having three different meanings in three acts, see R. Sampat-Mehta, op. cit., p.45.

71. See The Canadian Citizenship Act, R.S.C. 1970, c.C-19, ss. 23 and 1, which defines "Country of British Commonwealth" by reference to a schedule.

72. An amendment at S.C. 1974-75-76, c.108, s.31, defines a citizen of a Commonwealth country as one who is so by an enactment of such a country; the schedule of such countries is removed from The Citizenship Act, but presumably would be defined by reference to The Interpretation Act, R.S.C. 1970, c.I-23, s.28, which defines such country by schedule. S.31(2) of the Act provides that "For the purposes of any law in force in Canada" that refers to "British subject", such status shall hereafter be described either as Canadian citizen or citizen of the Commonwealth.

73. Republican members of the Commonwealth such as India, Cyprus, Malta and Sri Lanka do not recognize the Queen as Head of State, but merely as symbolic head of the Commonwealth association. See C. Joseph, op. cit., p.54, for comments on how India's admission to the Commonwealth changed the nature of that association. Uganda is a dictatorship still recognized by Canada as a Commonwealth country, see The Interpretation Act, R.S.C. 1970, c.I-23, s.28, as are Malaysia and Singapore, which were independent monarchies.
One scholar has noted that former British colonies, now independent, have frequently developed political systems which, although parliamentary, do not allow for a vigorous opposition, and which do not have the same respect for judicial independence. See W. Toxley, "Restrictive Citizenship Policies Within the Commonwealth" (1967), 13 McGill Law Journal, 494 at 502.

74. South African Act 1962, c.23, (U.K.), and Pakistan Act 1973, c.48, (U.K.).

75. The Schedule of Commonwealth countries in The Canadian Citizenship Act, R.S.C. 1970, c.C-19, recognized both countries and remained unamended until S.C. 1974-75-76, c.108 in force February 15, 1977, which deleted the schedule and by implication referred to The Interpretation Act, R.S.C. 1970, c.I-23, s.28, and its schedule for definition of Commonwealth country. This schedule as amended does not include South Africa, but does include Pakistan.

76. For example, see C. Perry, Nationality and Citizenship Laws of the Commonwealth and Ireland (1967), p.116.

FOOTNOTES (cont'd)

77. See - The Barristers & Solicitors Act, R.S.N.S. 1967, c.18, ss.3 & 6.
- The Law Society and Legal Professions Act, Stat. of P.E.I., 1974, c.L-9, ss.14 & 15.
- The Legal Profession Act, R.S.A. 1970, c.203, ss.39 & 40.
- The Legal Profession Act, R.S.S., c.301, as am. by S.S. 1968, c.39, s.2.
- The Law Society Act, R.S.M. 1970, c.L-100, s.36. s.37 also provides for loss of membership if member becomes citizen, takes oath of allegiance or practises law in a foreign state.
- The Bar Act, Stat. of Que., 1973, c.44, s.45. However, note that the province's Professional Code, Stat. of Que., 1973, c.43, s.44 specifies that except with respect to lawyers, notaries and land surveyors, no professional corporation may refuse membership to an applicant because he lacks Canadian citizenship if he is a legal permanent resident, domiciled in Quebec, and intends to apply for citizenship as soon as possible.
- The Legal Professions Act, S.B.C. 1971, c.31, ss.8 & 9.

78. The Barristers Society Act, S.N.B., 1973, c.80, s.9(1)(b) and 9(3).

79. The Law Society Act, R.S.N. 1970, c.201.

80. Correspondence from the Barrister's Society of New Brunswick, B. Stapleton, February 8, 1977. No answer received from inquiries made to the Law Society of Newfoundland on this point.

81. The Solicitors Act, 1957, 5 & 6 Eliz. 2, c.27, as am. by 1974, 22 Eliz. 2, c.47, s.29.

82. The common law position characterizing solicitors as "officers of the court" was codified by The Supreme Court of Judicature Act, 1873, 36-37 Vict., c.66, s.87. The Act of Settlement, 1700, 12 & 13 Will. III, c.2, s.3 stated that no alien "shall be capable to be of the privy council or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the Crown."
The view that The Act of Settlement prevented admission of aliens as solicitors is hinted at in the notes to the amendment referred to in note 81 found in 32 Hals Stat. of England (3rd ed.), and also referred to by English representative to the 11th International Bar Association, Robert Payne, in his comments on "Restrictions on Lawyer Qualified in One Country and Practising in Another Country", I.B.A. Eleventh Conference Report, (The Hague: Martinus Nijhoff, 1966), p.33. This view is also found in correspondence from

FOOTNOTES (cont'd)

82. (cont'd) England's Law Society, Mr. J.F. Warren, Deputy Secretary-General, April 14, 1977.

83. The wording of The Act of Settlement refers to holding of positions in the judiciary, legislature, or as public officers and there are significant differences between the relationship between these persons, and the State and solicitors -- Infra, 23-30.

Amendments removing the requirement in England were apparently not the result of civil liberties considerations but England's admission to the Common Market which was attempting to insure free movement of legal services among member countries. See letter from J.F. Warren, Deputy Secretary-General, The Law Society, England, April 14, 1977, referring to the reasons for the amendment: "The Bar in this country have, however, no such rule (re: British subject status) and we were under pressure not only on that account, but also because of the accession of the United Kingdom to the Treaty of Rome, which has meant, inter alia, that all nationality barriers of that nature have had to be lowered."

84. Correspondence from the Law Society, England, J.F. Warren, Deputy Secretary-General, Jan. 19, 1977.

85. Ibid., and also The Barristers Qualification for Office Act, 1961, 9 & 10 Eliz. 2, c.44, and see comment in 3 Hals. Stat. of England (4th ed.), para. 1132.

86. See V. Knoppke-Wetzel, op. cit., 871, at 883.

87. Litigation attacking this type of provision is summarized in the Knoppke-Wetzel article and in the Randcliffe article and in L. Kendall, "Admission to the Bar & Legally Resident Aliens", (1972), 17 Howard Law Journ. 682.

88. Truax v. Raich, 239 U.S. 33 (1915), a U.S. Supreme Court decision striking down a state law prohibiting any employer from having a work force made up of more than 5% aliens as a violation of resident aliens' rights to "equal protection."

89. This test was explained by the U.S. Supreme Court in Sugarman v. Dougall, 413 U.S. 634 (1973).

90. See Application of Park 484 P.2d 690 (1971); Raffaelli v. Cttee. of Bar Examiners, 496 P.2d. 1264 (1972); In Re Griffiths 413 U.S. 717 (1973) (which reversed 162 Conn. 249).

FOOTNOTES (cont'd)

91. Ibid.

92. For example, see Knoppke-Wetzel article and letters to the Professional Organizations Committee, from bar examiners in California (Aug. 22, 1977), New York, (Jan. 21, 1977) and Michigan, (Dec. 29, 1977).

93. See R. Payne, "Restrictions on Lawyers Qualified in One Country and Practising in Another Country", op. cit., pp.33-38.

94. Ibid. and "Foreign Branches of Law Firms: The Development of Lawyers Equipped to Handle International Practice" (1967), 80 Harvard Law Review 1284 at 1285-1295. Law Society of Upper Canada officials advised the author that even the giving of advice on the operation of foreign law in Ontario - by, for example, a British lawyer not called to the bar in Ontario about British law - would be considered the "unauthorized practice" of law, violating s.50 of The Law Society Act, R.S.O. 1970, c.238.

95. See V. Knoppke-Wetzel, pp.915-919 for discussions of implementation problems. Only recently has agreement been reached to allow lawyers in member countries to provide "occasional services" in other countries. See Letter, Ms. B. Brown, Asst. Sec., International Relations, The Law Society, England, April 14, 1977.

96. SEPLIS newsletter, #3, Dec. 1976, reported that EEC directives ordering abolition of nationality and residence requirements with respect to professionals was applicable immediately. SEPLIS is the association of self-governing professional bodies from EEC countries.

97. See Government of Ontario, Royal Commission on the Inquiry Into Civil Rights, Report, op. cit., pp. 1176-79, and Ontario, Debates, pp.3237-3249.

98. The Judicature Act, R.S.O. 1970, c.228, ss.85-108 states that the Registrar of the Supreme Court, the court reporters, the masters, the Official Guardian, and special examiners are officers of the court. No citizenship requirements are set out, although oaths of office are required. The term "officer of the court" is undefined, as it is in the Notaries Act, 1869, 33 Vict., c.6, s.2, The Law Society Act, R.S.O. 1970, c.238, s.29, and The Commissioners for Taking Affidavits Act, R.S.O. 1960, c.59, s.4. Although many cases discuss what the duties of an "officer of the court" may be, almost none discuss what the concept itself signifies. It was stated recently in Bianowsky v. Bianowsky [1972] 6 W.W.R. 679, that the characterization of someone as an officer of the court does not necessarily signify an identifiable category of powers and duties. That case involved a statute which designated

FOOTNOTES (cont'd)

98. (cont'd) probation officers as "officers of the court", and it was said that they were officers only in a "special and limited sense."

99. See, for example, A.R. Whiteway, Hints to Solicitors: A Treatise on The Law Relating to Their Duties as Officers of the High Court of Justice, (London: Stevens and Son, 1882) and cases he notes, which all emphasize necessity for honest dealing with the court, client or opposing attorney. Whiteway, in his chapter 2 dealing with duties as officers of the court, comments that a solicitor should not: misappropriate a client's funds; fail to keep an undertaking; use improper or malicious language; act without clear authority; comment to the press on a case which is before the court.

100. Ibid., p.13.

101. National Mercantile Bank v. Haynes (1880), 15 Ch.D, 42 at 52.

102. Holowaty v. Holowaty, [1949] 1 W.W.R. 1064, and Plant v. Urquhart, [1962] 1 W.W.R. 632.

103. See Whiteway, op. cit. at c.2, and also 21 Canadian Abridgement, (2nd ed.), on "Judges and Courts: Other Officers", cases thereunder, and Brendon v. Spiro, [1938] 1 K.B. 176, at 184-191, (C.A.). Also see Wilkins v. Geddes (1879), 3 S.C.R. 203, where it was said Court accountant had no right to keep interest on monies deposited in court, since he was an officer of the court, and Re E. (1922), 66 D.L.R. 399, where it was said that a court is not bound by the tariff or a taxation of a solicitor's bill, but has inherent jurisdiction over him as an "officer of the court."

104. See Brendon v. Spiro, at 189, and Whiteway, op. cit., c.2.

105. Brendon v. Spiro, at 188, quoting from Wightman J., in Re Francis Blake.

106. Similar comments were made in In Re Griffiths, at 725-26, by the U.S. Supreme Court.

107. Infra, pp.30-34.

108. Ontario, Debates, pp.3237-3249, and the position taken by the State of Connecticut, noted in In Re Griffiths, at 728.

109. In Re Griffiths, at 724, and again at 792: "Lawyers do indeed occupy professional positions of responsibility and influence

FOOTNOTES (cont'd)

109. (cont'd) that impose on them duties correlative with their vital right of access to the courts ... Yet, they are not officials of the government by virtue of being lawyers ... .. (nor are they) formulators of government policy."

110. The Public Service Act, R.S.O. 1970, c.286, has no requirement of citizenship or British subject status. Only those civil servants who fall within the scope of The Public Officers Act, R.S.O. 1970, c.382, s.1 are required to be British subjects. It is not defined in the Act who are public officers, but it is clear that many civil servants in policy-making positions are not public officers. This information received from Tod Mailing, Ontario Civil Service Commission, Nov. 9, 1977.

111. This was noted in In Re Griffiths, at 729, Footnote 14.

112. Ontario, Debates, pp.3237-3249, and the position taken by the State of Connecticut in In Re Griffiths, at 123-24.

113. Mr. Justice Black of the U.S. Supreme Court in Cammer v. U.S., 350 U.S. 399 at 405 (1956).

114. The Public Officers Act, R.S.O. 1970, c.382, ss.1 & 4. If barristers and solicitors were considered to be public officers, the distinction would not have been necessary.

115. Raffaelli v. Cttee. of Bar Examiners, at 1272.

116. For example, there is no citizenship requirement for Court Reporters or special examiners. Only those specified as officers of the court in The Judicature Act, who fit within the scope of The Public Officers Act, must fulfill a nationality requirement.

117. As illustrated in case law:
- Next Friend: Morgan v. Thorne (1841) 151 E.R. 821;
- Receivers: Boehm v. Goodwall, [1911] 1 Ch. 155; Sovereign Bank of Canada v. Parsons, [1913] A.C. 160
- Trustees in bankruptcy: Ex. P. James (1874), 30 L.T. 773, and M. Hunter, ed., Williams, Sir Roland, Law and Practice in Bankruptcy, (17th ed.), (London, Stevens, 1958).

118. See The Trustee Act, R.S.O. 1970, c.470, The Arbitrations Act, R.S.O. 1970, c.25 (arbitrators can administer oaths, and make awards); Public Inquiries Act, R.S.O. 1970, c.379 (commissioners have power to enforce attendance of witnesses and compel testimony from them).

119. See The Commissioners For Taking Affidavits Act, R.S.O. 1960, c.59, ss.4 & 6, and S.O. 1968-69, c.12, s.1.

FOOTNOTES (cont'd)

120. See 33 Vict. c.6, s.2 and S.O. 1962-63, c.91, s.2.

121. Supra footnotes 39 and 41, and text p. 11.

122. Supra footnote 85, and text p.21-22, and The Law Society Act, R.S.O. 1970, c.238, s.29 - compare, e.g. to The Barristers Act, 1912, 2 Geo. c.27 or R.S.O. 1960 c.30.

123. The Law Society Act, R.S.O. 1970, c.238, s.28(d) and 29.

124. Re Raffaelli, at 1270-71.

125. Public Service Act, R.S.O. 1970, c.386, s.10(2).

126. - National Defence Act, R.S.C. 1970, c.N-4, s.23(2).
- Police Act, R.S.O. 1970, c.351, s.64.

127. See text of oaths required under R. 51, The Law Society Act, R.S.O. 1970, c.238, and Re Raffaelli, at 1270, and Application of Park, at 693-694, in which it is said an alien can swear an oath of allegiance and needs only honest intent to do so.

128. E.g. J. Rand Cliffe, "Aliens: The Unconstitutional Classification for Admission to the Bar", (1972), 4 St. Mary's Law Journ. 181 at 189-191.

129. Besides the penalties applicable to all residents under ordinary criminal law, The Immigration Act, R.S.C. 1970, c.225, provides that a landed immigrant may be deported if he commits any criminal offence, or is likely to engage in a criminal offence, or is "reasonably" suspected of acts of espionage or treason, or is likely to engage in acts of violence, or is dependant on public assistance for support. Canada subjects aliens to more severe standards than citizens in terms of compliance with our laws.
See also J. Salmond, op. cit., pp.50-51, who says the distinction between citizen and alien subjects is not in the degree of allegiance owed, but rather lies in the fact that citizen subjects owe allegiance even outside the jurisdiction, while alien subjects only do when within the jurisdiction.

130. See for example, the broader rules for deportation of landed immigrants, compared to narrow rules for deportation of naturalized citizens, The Immigration Act, R.S.C. 1970, c.225.

131. The Oaths of Allegiance Act, R.S.C. 1970, c.197, s.3, and The Public Officers Act, R.S.O. 1970, c.382, s.4. Latter makes clear distinction between public officers (who must be citizens) and barristers and solicitors; all can take prescribed oath.

FOOTNOTES (cont'd)

132. The Canadian Citizenship Act, R.S.C. 1970, c.C79, stated that a person could lose Canadian citizenship if he voluntarily became the citizen of another country (s.15) or took an oath of allegiance in a foreign country (s.18(1)). The new Act removes these grounds for loss of citizenship, S.C. 1974-75-76, c.108, s.9.

133. Supra, text pp.25-27, and note 73.

134. See Re Raffaelli, at 1270-71, and In Re Griffiths, at 725-727.

135. In Re Griffiths, at 726, note 17.

136. See Peter v. Secretary of State, 347 F. Supp. 1035; Cafiero v. Kennedy, 262 F. Supp. 140; U.S. v. Matheson, 532 F. 2d 809; Baker v. Rusk, 296 F. Supp. 1244. The last case concerned a U.S. citizen who had taken an oath of allegiance upon admission to the Alberta Bar. The court stated that the oath did not necessarily indicate a desire to renounce U.S. citizenship, but only raised the question whether the individual was in making the oath intending to voluntarily relinquish his citizenship.
Despite this case law, however, many U.S. nationals apparently feel that the taking of an oath of allegiance to a foreign country puts in jeopardy their U.S. citizenship. Because of this the Ontario Civil Service Commission does not require U.S. citizens working for the provincial government to take the oath of allegiance required of all those who become permanent members of the civil service, but merely keeps them on in probationary status. This information was obtained from Mr. Tod Mailing of the Ontario Civil Service Commission in an interview on November 9, 1977.

137. The Law Society Act, R.S.O. 1970, c.238, Rules made thereunder, Rule 51.

138. See provisions of The Immigration Act referred to in footnote 129.

139. The Judicature Act, R.S.O. 1970, c.228, s.86.

140. See, for example, The California State Bar Act, c.4, art.4, para.6067.

141. Ontario, Debates, pp.3237-3249.

142. Ibid.

143. K. Jarvis, op. cit. at 341.

FOOTNOTES (cont'd)

144. R.R.O. 1970, R. 556, ss.5-8 made special provisions for Transfer admission of lawyers from certain Commonwealth countries or the U.S. These sections were revoked by O.R. 160/73 and 220/75.

145. E.g., Alberta's Legal Profession Act, R.S.A. 1970, c.203, s.42, or in California, Rules Regulating Admission to Practise Law in California, Committee of Bar Examiners, April, 1977, Rule IV, s. 42.

146. Supra, text pp.25-27, note 73.

147. Ibid.

148. See Keenan v. Board of Law Examiners, 317 F. Supp. 1350 at 1359 (1971).

149. See R.R.O. 1970, Reg. 556 as amended, s.4(2)(d) & (e). L.S.U.C. also administers the test on behalf of other provincial law societies to some applicants from foreign states.

150. N.Y. State, Court of Appeal, Rules for the Admission of Attorneys and Counsellors at Law, Jan. 1977, Part 520.3(h).

151. See In Re Griffiths, at 730-733, and Sugarman v. Dougall, at 649.

152. Infra, pp.49-51.

153. Ontario, Debates, pp.3237-3249.

154. K. Jarvis, op. cit. at 341.

155. See The Solicitors Act, 32 Hals. Stat. of England (3rd ed.), s.4, and Statutory Instrument 1964 No.1848, Overseas Solicitors (Admission) Order 1964 which sets out varying requirements which may be made of solicitors from different Commonwealth countries.

156. K. Jarvis, op. cit. at 341.

157. R.R.O. 1970, R. 556, as amended, by O.R. 160/73 and O.R. 220/75.

158. Government of Ontario, Royal Commission on the Inquiry Into Civil Rights, Report, op. cit., pp. 1179-80.

159. K. Jarvis, op. cit. at 346.

160. K. Jarvis,"Submission to the Federation of Law Societies of Canada respecting Uniform Standards of Admission Requirements for Applicants coming from Jurisdictions Outside Canada",(August 1974), p.2.

FOOTNOTES (cont'd)

161. Government of Ontario, Committee of Inquiry on the Healing Arts, Report, op. cit., p. 51.

162. Interview with S. Noble, Foreign Liaison Officer, Dept. of Manpower and Immigration, April, 1977.

163. See V. Knoppke-Wetzel, op. cit., pp.915-919, and letter from Ms. B. Brown, The Law Society, England, and SEPLIS newsletter, December 1976.

164. See Laskin, at 869.

165. Ibid., 863, and In Re Narain Singh [1908], B.C.R. 477 at 480.

166. The Immigration Act, R.S.C., c.325, ss.3-7, and regulations.

167. From "Provincial Legislation 1899-1900 (British Columbia)", cited in A.H. LeFroy, Canada's Federal System, (Toronto: Carswell, 1913) at 670. The Minister of Justice stated: "Parliament having undertaken to regulate immigration and not having required any educational attainments from intending immigrants ... it would be inadvisable to leave this Act to its operation."

168. See especially Takashi v. Fish & Game Commission 334 U.S. 410 at 419 (1948): "The Federal government has broad constitutional powers determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution, the states have no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the U.S. or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the U.S. conflict with this constitutionally derived Federal power to regulate immigration, and have accordingly been held invalid."

169. [1899] A.C. 580.

170. [1903] A.C. 151.

171. Ibid., at 151, headnote.

172. Ibid., at 157.

173. E.g., see Raffaelli case, at 1272-3 for U.S. view.

174. (1914), 49 S.C.R. 440.

175. Ibid., J. Conn, "Immigration", (July, 1900) Queen's Quarterly, as quoted by Barber in introduction.

FOOTNOTES (cont'd)

176. [1923] A.C. 450 (P.C.).

177. Ibid.

178. A.G.B.C. v. A.G. for Canada, [1924], A.C. 203 (P.C.).

179. (1975), 55 D.L.R. (3d) 527. Any doubt about its constitutional validity should be removed by recent Federal legislation amending The Citizenship Act, to allow provincial cabinets to pass regulations under that Act restricting acquisition of land by aliens (which is not defined to include landed immigrants). See S.C. 1974-75-76, c.108, s.33, not yet in force.

180. See Truax v. Raich, headnote.

181. See Takashi v. Fish & Games Commission, at 420-421, or In Re Griffiths, at 721-2.

182. See Sugarman v. Dougall, at 641-646.

183. The Ontario Human Rights Code, R.S.O. 1970, c.318, s.4.

184. Government of Ontario, Ontario Human Rights Commission, Life Together: A Report on Human Rights in Ontario (Ontario: Ontario Human Rights Commission, 1977), pp. 59-60. The report inter alia, contains the Commission counsel's legal opinion as to why "Nationality" encompasses "citizenship."

185. Ibid., pp. 23-24.

186. S.O. 1972, c. 119, s. 6, s. 4a(2) of Act now reads: "No self-governing profession shall exclude from membership or expel or suspend any person or member of discriminate against any person or member because of race, creed, colour, age, sex, marital status, ancestry or place of origin."

187. Government of Ontario, Ontario Human Rights Commission, Life Together, op. cit., pp. 59-60.

188. Government of Ontario, Royal Commission on the Inquiry Into Civil Rights, Report, op. cit., pp. 1176-77.

189. The Elections Act, R.S.O. 1970, c. 142, ss. 9 & 36.

190. Canada Elections Act, R.S.C. 1970 (1st Supp.) c. 14, ss. 14(1)(2) and 20 provided British subjects would lose privileges under this Act in June, 1975.

191. See The Architects Act, R.S.O. 1970, c. 27.

FOOTNOTES (cont'd)

192. The Law Society Act, R.S.O. 1970, c.238, as amended, s.23a.

193. The Professional Engineers Act, R.S.O. 1970, c.366, s.4.

194. The Public Accountancy Act, R.S.O. 1970, c.373.

195. The Business Corporations Act, S.O. 1972, c.138, ss.1 and 30.

196. The Business Corporations Act, S.O. 1974, c.26, s.1.

197. Some professions, such as the architects in Ontario, require Ontario domicile or residence for general membership and in such cases membership on the governing body should be open to those with Ontario residence (or domicile) who are admitted to Canada for permanent residence.

198. See Knoppke-Wetzel, op. cit., p.907. Author's survey at p.894 showed that in 12 "liberal" states, only 10 alien applicants in all admitted in period 1967-72.

199. R.R.O. 1970, R. 556, as amended, s.4.

200. The Law Society Act, R.S.O. 1970, c.238, s.28(c), and R.R.O. 556, as amended, s.26(5). Regulations which had allowed a transfer of some foreign-trained lawyers into the Bar Admission program were repealed by O.R. 160/73 and O.R. 220/75.

201. Interview with Miss Mavis Gardiner, Law Society of Upper Canada, October, 19, 1977.

202. Treasurer's Report on Admissions, Law Society of Upper Canada Gazette, VI (1972) p.3. In 1971 of 455 persons called, only 24 applications were from persons coming from outside Canada.

203. See Knoppke-Wetzel, op. cit., at 907. Author's questionnaire information indicated "a negligible number of resident aliens who had been admitted or whose applications were pending as foreign practitioners."

204. This need and the contribution of comparativists are discussed in "Foreign Branches of Law Firms", op. cit., at 1285-1288.

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